In the

United States Court of Appeals

For the Seventh Circuit

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

Petition for Review of Order of the Federal Trade Commission.

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POOR COPY

244 COMMISSION'S EXHIBIT NO. 1.

Rhodes Pharmacal Company
Imdrin

Opening.

Announcer: The next portion of the (Name of Program) is brought you by the Rhodes Pharmacal Company, makers of Imdrin. In a moment I'll be back to tell you folks who have been suffering from arthritis, sciatica, rheumatism and neuritis news about Imdrin . . . the Brand-new, safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritis pain, stiffness, and swelling.

245 COMMISSION'S EXHIBIT NO. 2.

November 19, 1948.

Imdrin—3rd Revised

Commercial #1.

Announcer: If the misery of rheumatic and arthritic pains have been driving you to distraction—if you are plagued day after day with tormenting aches, swelling and stiffness, then you know how much discomfort and torture such conditions can cause, and how hard it is to get your proper rest at night. But did you know that all this agony may be unnecessary? If these unendurable aches and pains are due to rheumatism, start now using safe new Imdrin for quick relief! (Pause.) You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! . . . that not only stops pain, helps reduce swelling, but acts to uncork the joints! Thus clinical reports prove that people who have suffered from arthritis, sciatica, rheumatism and neuritis up to 20 years have been eased of pain often in 48 hours, sometimes overnight . . . without taking habit-forming or dangerous

drugs! Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past! Profit by the experience of many others. Get Imdrin . . . from your druggist today. Insist on Imdrin . . . I-m-d-r-i-n . . . Imdrin . . . to relieve pain and discomfort caused by arthritis and rheumatism!

246 COMMISSION'S EXHIBIT NO. 3.

Imdrin-3rd Revised November 19, 1948

Imdrin Radio Test!

Announcer: #2: If life just hasn't seemed worth living because of distressing arthritic and rheumatic pains, there's still glorious new hope for you! . . . Try Imdrin, the new, safe, easier way which folks from coast to coast who suffered just as you do, tell us has brought them speedy comfort and prolonged freedom from pain. Imdrin Tablets are easy to take. Instructions come with each bottle. Most important, Imdrin is unlike anything else you've ever known . . . contains an entirely new scientific discovery. No faster relief is known today! Stiffness and swelling disappear . . . often overnight! Imdrin is sold at all (Name of Chain) stores. And any independent druggist either has Imdrin or can get it at once from his wholesaler. Call for Imdrin . . . I-m-d-r-i-n. Don't delay! Get Imdrin today to have on hand at the first sign of the tortures of rheumatism, arthritis, sciatica, or neuritis.

247 COMMISSION'S EXHIBIT NO. 4.

Imdrin 3rd Revised November 19, 1948

Commercial #3.

Announcer: To everyone of you folks suffering the savage pains of rheumatism or arthritis, we ask this question: Will you take less than five minutes and invest just one cent for information which may make you Jump For Joy! Simply send your name and address on a penny postcard to Imdrin . . . I-m-d-r-i-n, Imdrin, in care of this station ..... Information will be sent you at once airmail, special delivery. We will tell you about Imdrin,

POOR COPY

the only tablets scientifically compounded with a remarkable new ingredient that not only stops pain, helps reduce swelling, but acts to uncork the joints . . . Imdrin, which has helped so many folks to again regain restful sleep, to resume normal occupations and once again to lead rich, active lives. Write today for your information. Remember the address . . . I-m-d-r-i-n, Imdrin, in care of this Station ..... Your druggist has Imdrin! Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica, and neuritis. Get your Imdrin today!

248 COMMISSION'S EXHIBIT NO. 5.

Rhodes Pharmacal Co. January 4, 1949
Imdrin
Copy A

Announcer: If the agony of rheumatic and arthritic pains have been getting you down—if you are racked twenty-four hours a day by torturing aches, beset by swelling, and stiffness—then you know how such conditions can make your job seem twice as hard as it really is. Make your life miserable, while others are enjoying themselves, and spoil your rest at night. But did you know that all this agony may be unnecessary? If these unendurable aches and pains are due to rheumatism, start now using safe new Imdrin for quick relief! (Pause) You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! . . . that not only stops pain, helps reduce swelling, but acts to help uncork the joints! Thus clinical reports prove that many people who have suffered from arthritis, sciatica, rheumatism and neuritis up to 20 years have been eased of pain often in 48 hours, sometimes over-night . . . without taking habit-forming or dangerous drugs! Non-Toxic! Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past! Profit by the experience of many others. Get Imdrin . . . from your druggist today. Insist on Imdrin . . . I-m-d-r-i-n . . . to relieve pain and discomfort caused by arthritis and rheumatism!

249 COMMISSION'S EXHIBIT NO. 6.

Rhodes Pharmacal Co. January 4, 1949
Imdrin

Announcer: If you are sick and tired of suffering from distressing arthritis and rheumatic pains that spoil every waking hour and keep you awake at night, there's still glorious new hope for you! Try Imdrin, the new, safe, easier way which folks from coast to coast who suffered just as you do, tell us has brought them speedy comfort and prolonged freedom from pain. Imdrin tablets are easy to take. Instructions come with each bottle. Most important, Imdrin is unlike anything else you've ever known . . . contains an entirely new scientific discovery. No faster relief is known today! Stiffness and swelling disappear . . . often overnight! Imdrin is sold at all (name of chain) stores. And any independent druggist either has Imdrin or can get it at once from his wholesaler. Call for Imdrin, . . . I-m-d-r-i-n. Don't delay! Get Imdrin today to have on hand at the first sign of the tortures of rheumatism, arthritis, sciatica, or neuritis.

250 COMMISSION'S EXHIBIT NO. 7.

Rhodes Pharmacal Co. January 4, 1949
Imdrin
Commercial #3

Announcer: To everyone of you folks suffering the savage pains of rheumatism or arthritis, we ask this question: Will you take less than five minutes and invest just one cent for information which may make you Jump For Joy! Simply send your name and address on a penny postcard to Imdrin . . . I-m-d-r-i-n, Imdrin, in care of this station ..... Today send your information or send us your doctor's name and we will rush him full facts about Imdrin. Information will be sent at once airmail, special delivery. We will tell you about Imdrin, the only tablets scientifically compounded with a remarkable new ingredient that not only stops pain, helps so many folks to again regain restful sleep, to resume normal occupations and once again to lead rich, active lives. Write today for your information. Remember the address . . . I-m-d-r-i-n, Imdrin, in care of this station ..... Your druggist has Imdrin! Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica, and neuritis. Get your Imdrin today!

FEDERAL TRADE COMMISSION
Docket No. 5691 Commission's Exhibit No. 8
IN THE MATTER OF Rhodes Pharmacal
DATE 9/27/50 WITNESS Pace
ELECTREPORTER, INC. Official Reporter
By Rumrack

8

Ad No. 3-48—2 in. x 42 lines

FEDERAL TRADE COMMISSION
Docket No. 5691 Commission's Exhibit No. 8

AMAZING NEW DISCOVERY FOR RHEUMATISM, ARTHRITIS

Gives Fast Pain Relief Safe...Hospital Tested

If you have been suffering tortures of rheumatic and arthritic pains, for days, months, or even years, IMDRIN with its amazing new wonder-working ingredient may very well be the answer to your problem of pain-free living. IMDRIN has been clinically tested in hospitals throughout the country. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known. Even people who suffered for twenty years were able to live free of pain . . . like happy human beings once again. DON'T GIVE UP HOPE! IMDRIN works internally . . . promises you a better life. IMDRIN, is non-habit forming, proven safe when used as directed. Try IMDRIN today. If you don't agree it is the fastest arthritic and rheumatic pain reliever you've ever tried, return for money back. Get IMDRIN at your favorite drug store today . . . resume comfortable living tonight.

O'Neil, Larson & McMahon
BtrC 3456—11-12-48—2

mc Mahon Exhibit 12.

FEDERAL TRADE COMMISSION

Docket 5691

Ad No. R.A.—1-48R—2 col. x 40 lines

Rhodes

9-27-50 Rec'd

Amazing New Discovery for Rheumatic

RHEUMATISM, ARTHRITIS

NO FASTER ARTHRITIC PAIN RELIEF KNOWN!

SAFE...HOSPITAL TESTED

If you have been suffering the tortures of rheumatic and arthritic pains, swelling and stiffness for days, months, or even years, IMDRIN with the amazing new wonder working discovery may very well be the answer to the problem of pain-free living. IMDRIN has been clinically-tested in hospitals. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known to medical science. Persons whose cases of suffering have been thought almost hopeless . . . yes, even people who had suffered and hoped for twenty years, were able to live free of pain . . . like happy human beings once again. No other medicine for rheumatism and arthritis thus far discovered by medical science has such an amazing record . . . and can back it up with proven hospital and clinical reports. DON'T GIVE UP HOPE. IMDRIN with amazing, new ingredient, that works internally and promises you a better life . . . is as close to you as your nearest drug store. IMDRIN is non-habit forming and proven safe. Try IMDRIN today—use as directed. If you don't agree that it is the fastest arthritic and rheumatic pain reliever you ever tried return for money back. Get IMDRIN today at your favorite drug store . . . resume comfortable living tonight.

O'Neil, Larson & McMahon—B&C 3708—11-22-48—1

McMahon Exhibit C.

FEDERAL TRADE COMMISSION
Docket No. 5691 Exhibit No. 10
IN THE MATTER OF Rhodes
DATE 9-27-50 WITNESS Rose
REPORTER Lucas

10

Rheumatic, Arthritic Sufferers

TODAY! RESUME CONFIDENT PAIN-FREE LIVING WITH AMAZING NEW *IMDRIN*

If you have suffered the tortures of the damned because of rheumatic and arthritic pains, swelling and stiffness ...get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year... listen! IMDRIN with its amazing new wonder-working ingredient, may answer your problem of comfortable living. In case after case IMDRIN has proved its potency as one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered, waited and hoped for as long as twenty years are able to live happy, comfortable, human lives once again. No other medicine for rheumatism and arthritis pains can make this amazing statement... back it up with proven clinical records. DON'T GIVE UP! Amazing new IMDRIN brings *new hope* of a better life for you . . . and is as close right now as your nearest drug store. Get IMDRIN today. Use as directed. If you don't agree that amazing, new, scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN at your drug store today ...resume comfortable living tonight!

O'Neil, Larson & McMahon—B&C 3339—11-4-48

Mc Mahon Exhibit No. 7.

B.

PUBLISHED ADVERTI. REFERENCE DATA

; News.; or other Per.: Cleveland Plain Dealer (NAME OF PUBLICATION) 14 Nov 77 (ISSUE DATE)

O.: Gen. Cat.; Circ.; Spec. Folder; Flyer: _____ (FIRM) _____ (SERIAL NO.) _____ (ISSUE DATE)

4 (SEC. NO.) 35 (PAGE NO.) _____ (COL. NO., IF CLASSIFIED) 23 Oct 79 (PRE. REV. DATE) _____ (EXAMINER)

_____ (NAME OF ADVERTISER) _____ (REFERRED BY-COMPLAINT LETTER-DATE)

Imdrin - rheumatism arthritis - remedy (PRODUCT, OR SERV. LIST)

_____ (TITLE OF COLUMN, IF CLASSIFIED)

11

Docket No. 7691
IN THE MATTER OF
DATE 9-27-78
HEARING EXAM.

Trudie Rose Kenworth

Rheumatic, Arthritic Sufferers:

If you have suffered the tortures of the damned because of rheumatic and arthritic pains, swelling and stiffness . . . got up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year . . . listen! IMDRIN with its wonder-working ingredients, may answer your problem of comfortable living. In case after case IMDRIN has proved its potency as ONE of the fastest arthritic and rheumatic pain relievers known to medical science. Cases documented almost hopeless . . . persons who suffered, waited and hoped for

so long as twenty years are able to live happy, comfortable, human lives once again. No other medicine for rheumatism and arthritic pains can make this statement . . . back it up with proven clinical records. DON'T GIVE UP! IMDRIN brings new hope of a better life for you . . . and is as close right now as your nearest drug store. Try IMDRIN today. Use as directed. If you don't agree that scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN at your drug store today . . . resume comfortable living tonight! (Adv.)

77

Docket No. 5497 Commission's Exhibit No. 12
IN THE MATTER OF Radio Pharmacal
DATE 9/27/50 WITNESS Foal

Amazing New Discovery for RHEUMATISM ARTHRITIS

NO FASTER PAIN RELIEF KNOWN

SAFE—HOSPITAL TESTED

Sensational New Research Discovery Stops Swelling ... Worries Inside.

NEW, SAFE, SCIENTIFIC TABLET

Not a narcotic! Not habit forming! Longtime sufferers from rheumatism, arthritis, and neuritis may find IMDRIN gives glorious relief, fast. Contains new wonder-working ingredient . . . no drugs or harmful drugs. Ask for IMDRIN today.

DEVELOPED AFTER THREE YEARS OF EXTENSIVE TESTS IN HOSPITAL CLINICS

IMDRIN has been a closely guarded experimental secret. Now proved conclusively to work internally toward amazing reduction of pain, heat, redness and swelling. For victims of rheumatism, arthritis, neuritis, sciatica, neuralgia. Get IMDRIN today.

RELIEVES PAIN AND SUFFERING AFTER 20 YEARS OF TORTURE

"About 20 years ago, arthritis forced me to quit my job, and walk with crutches. Finally, I tried IMDRIN. Today, nearly all soreness is gone, and my agony is over." G. H. P. Record, Mich.

"After five years of suffering, I discovered IMDRIN. The first day pain vanished. Now I walk without a cane and use my hand for dressing. Inflamed all disappeared. I feel better at 58 than years ago." A. V. Chamberlain, S. C.

"IMDRIN is worth thousands of dollars to me. When I used to assess my pain, it stabbed me like a knife. I tried many remedies, but only IMDRIN has brought wonderful relief." A. C. K. Spokane, Wash.

Photos, address on request. ©Signed by model.

TODAY—BEGINS PAIN-FREE LIVING

Become a More Normal, Active Life
Do as thousands of former arthritic sufferers do: See those pains relieved. Today . . . try amazing IMDRIN. Start living a happier, more comfortable life once again. Buy IMDRIN now!

WHERE RHEUMATISM STRIKES . . . AND HOW TO DETECT IT

Rheumatic and arthritic pain and inflammation strike any of the areas indicated on above chart (see Arrows). But these diseases have many forms and symptoms. *All forms* cause pain, frequent swelling, and possible loss of function of joints. Hospital test patients given IMDRIN resumed happy, active living once pain subsided and confidence grew. IMDRIN reduces swelling and eases pain rapidly. IMDRIN may give you the same blessed results. Get IMDRIN today!

HOW IMDRIN HELPS YOU!

If you suffer the tortures of arthritic pain, IMDRIN may be your greatest hope. IMDRIN is one of the fastest arthritic pain relievers known. Cases deemed almost hopeless . . . persons suffering twenty long years . . . are now living happy lives. Every case backed by hospital and clinical proof. Get IMDRIN today. If it isn't the greatest blessing you've ever used, return for your money back. Get IMDRIN today—resume comfortable living tonight!

AMAZING NEW IMDRIN

SAFE! SCIENTIFIC!

IMDRIN contains no dope or harmful drugs to cast habit forming. Hospital tests proven by one of the fastest pain relievers known for arthritic and rheumatic sufferers. Start using IMDRIN today. Don't allow the disease to enjoy living once again.

NO FASTER ARTHRITIC PAIN RELIEF.....OR YOUR MONEY BACK

MAIL THIS COUPON IF YOU LIVE OUT OF TOWN

DEALER'S NAME

DEALER NAME & ADDRESS
Stock up a 10 bottle of the new IMDRIN today.
☐ Send C.O.D. plus postage and ..... 25 extra for investigation enclosed. You pay postage.
Send large economy size, $5.00 ☐
NAME
ADDRESS
CITY ZONE STATE
Satisfaction Or Your Money Back

O'Neil, Larson & McMahon—B&C 5241—3-15-49—3

Mc Mahon Exhibit 2

FEDERAL TRADE COMMISSION
Docket No. 5611 EXHIBIT No. 13
IN THE MATTER OF Lander
DATE 9-27-50 WITNESS Rose
Ad No. 2-49R—3 col. x 123 lines

Amazing Discovery for Rheumatism, Arthritis

No Faster Arthritic Pain Relief Known

Developed After Three Years of Extensive Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Where Rheumatic Pain Strikes . . . And How to Detect It!

Rheumatic and arthritic pain and inflammation can strike the joints in any of the indicated affected areas. (See arrows in illustration at right.) But these diseases have many forms and each form has varying symptoms.

Hospital and clinical test patients receiving IMDRIN, some of whom had suffered hopelessly for as long as twenty years, were able to resume more happy, active living once the pain subsided and their confidence grew. IMDRIN, working internally, eased pain rapidly. IMDRIN today is your great hope. IMDRIN with the new ingredient, may give you the same blessed successful results. Get IMDRIN today!

SAFE—HOSPITAL TESTED

Stops Swelling . . Uncorks Joints . . Contains Sensational Research Discovery

NEW, SAFE, SCIENTIFIC TABLET

Not a Narcotic . . . Not Habit Forming . . . AT LAST THE STORY CAN BE TOLD! Medical science has turned its attention to relieving the agonizing pains caused by rheumatism and arthritis. The result of extensive research is a wonder-working ingredient which is now combined with other pharmaceuticals into a remarkable preparation called IMDRIN. Longtime sufferers from rheumatism, arthritis, neuritis, and gout may find IMDRIN gives glorious relief so sensationally fast it's really amazing! There's nothing faster available to the public today. Contains no dope or harmful drugs. Only after three long years of clinical work and hospital testing was this fast, safe pain-killer developed, but today it is REALITY. If you suffer rheumatic pain ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture

Men, why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with IMDRIN.

NEW . . . SAFE . . . SCIENTIFIC

IMDRIN

Resume a More Normal More Active Life

For fast pain relief try IMDRIN, the amazing new scientific discovery. IMDRIN is one of the latest reliefs from arthritic pain known to medical science.

IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

The torturous pain of arthritis is a destroyer of good looks—makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. Only $3.00 with satisfaction guaranteed or your money back.

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK . . .

AT WALGREEN'S • STINEWAY • GOLDBLATT'S • FORD HOPKINS LIGGETT-REXALL DRUGS • WIEBOLDT'S • FAY DRUG STORES SEARS, ROEBUCK AND CO. • AND DRUGGISTS EVERYWHERE

O'Neil, Larson & McMahon—BBC 5174—3-8-49—3

PUBLISHED ADVERTISE.. EVIDENCE DATA

Mg.; News.; or other Per.: The Cedar Rapids Iowa 1949
(NAME OF PUBLICATION) Gazette March 13.
(ISSUE DATE)

M. O.: Gen. Cat.; Circ.; Spec. Folder; Flyer: _____ (FIRM) _____ (SERIAL NO.) _____ (ISSUE DATE)

(SEC. NO.) 6 (PAGE NO.) _____ (COL. NO., IF CLASSIFIED) 4/29/49 (PUB. REVI DATE) R.W. (EXAMINER)

Imdrin
(NAME OF ADVERTISED) (REPORTED BY-COMPLAINT LETTER-DATE)

Imdrin
(PRODUCT, OR SERV. LINE)
{for arthritis-etc}

(TITLE OF COLUMN, IF CLASSIFIED)

FEDERAL TRADE COMMISSION
Docket No. 5691 Rhodes 22
IN THE MATTER OF Rhodes Pharmacal Co.
DATE 9-27-50 WITNESS Rose
REPORTER Reporter

ARTHRITIS

AND RHEUMATISM SUFFERERS

IMDRIN

Formerly known as IMDRIN With no change in formula

$2.98

Mail Orders Filed. Send $3.04

1-48

22

COMMISSION'S EXHIBIT NO. 24.

FUNDADOR—a brandy of delectable taste

There are few ports of call in all the world where the brandies of Pedro Domecq are not cherished by the most discriminating people. Ask for Fundador or Three Vines—still produced in Jerez, Spain, by the House of Pedro Domecq, in its seventh generation of unbroken lineage.

Pedro Domecq

CANADA DRY

Brandies

Fundador—Three Vines
Each 86 PROOF—

Amazing New Discovery for

RHEUMATISM, ARTHRITIS

NO FASTER ARTHRITIC PAIN RELIEF KNOWN!

SAFE...HOSPITAL TESTED

If you have been suffering the tortures of rheumatic and arthritic pains, swelling and stiffness for days, months, or even years, IMDRIN with the amazing new wonder working discovery may very well be the answer to the problem of pain-free living. IMDRIN has been clinically-tested in hospitals. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known to medical science. Persons whose cases of suffering have been thought almost hopeless . . . yes, even people who had suffered and hoped for twenty years, were able to live free of pain . . . like happy human beings once again. No other medicine for rheumatism and arthritis thus far discovered by medical science has such an amazing record . . . and can back it up with proven hospital and clinical reports. DON'T GIVE UP HOPE. IMDRIN with amazing, new ingredient, that works internally and promises you a better life . . . is as close to you as your nearest drug store. IMDRIN is non-habit forming and proven safe. Try IMDRIN today—use as directed. If you don't agree that it is the fastest arthritic and rheumatic pain reliever you ever tried return for money back. Get IMDRIN today at your favorite drug store . . . resume comfortable living tonight.

AT FORD HOPKINS, GOLDBLATT BROS., LIGGETT-REXALL DRUGS, SEARS ROEBUCK, STINEWAY, WALGREEN, WIEBOLDTS, AND DRUGGISTS EVERYWHERE.

COMMISSION'S EXHIBIT NO. 25.

Rheumatic, Arthritic Sufferers

TODAY! RESUME CONFIDENT PAIN-FREE LIVING WITH AMAZING NEW *IMDRIN*

If you have suffered the tortures of the damned because of rheumatic and arthritic pains, swelling and stiffness ...get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year... listen! IMDRIN with its amazing new wonder-working ingredient, may answer your problem of comfortable living. In case after case IMDRIN has proved its potency as one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered, waited and hoped for as long as twenty years are able to live happy, comfortable, human lives once again. No other medicine for rheumatism and arthritis pains can make this amazing statement... back it up with proven clinical records. DON'T GIVE UP! Amazing new IMDRIN brings *new hope* of a better life for you . . . and is as close right now as your nearest drug store. Get IMDRIN today. Use as directed. If you don't agree that amazing, new, scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN at your drug store today ...resume comfortable living tonight!

AT FORD HOPKINS, GOLDBLATT BROS., LIGGETT-REXALL DRUGS, SEARS ROEBUCK, STINEWAY, WALGREEN, WIEBOLDTS, AND DRUGGISTS EVERYWHERE.

[ADVERTISMENT]

Were Stomach Ulcer Pains Napoleon's Waterloo?

The great Napoleon who conquered nations was himself a victim of after-eating pains. If excess stomach acidity causes you distress after eating, or painful heartburn, gas, sour stomach, indigestion, even stomach ulcer pains, then try Udga for quick relief. Udga Tablets contain 3 proven fast-acting medicinal ingredients. Like a doctor's prescription, Udga works soothingly and fast. More than 210 million sold since 1928. Get a 25c box of Udga and if you, too, don't get amazing relief within ½ hour, you get DOUBLE YOUR MONEY BACK.

—EDUCATIONAL—

BALLROOM DANCING CLASS

8-week term begins Saturday, Jan. 29. Waltz, fox-trot, rumba. Also classes in Contract Bridge by national authority. Spanish, Marriage, Speech, Psychology, Interior Decorating, others. Men and women. Catalogue.

LAWSON YMCA ADULT EDUCATION SCHOOL
30 W. Chicago Ave. WHitehall 4-4211

COMMISSION'S EXHIBIT NO. 26.

AMAZING NEW DISCOVERY FOR RHEUMATISM, ARTHRITIS

Gives Fast Pain Relief Safe...Hospital Tested

If you have been suffering tortures of rheumatic and arthritic pains, for days, months, or even years, IMDRIN with its amazing new wonder-working ingredient may very well be the answer to your problem of pain free living. IMDRIN has been clinically tested in hospitals throughout the country. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known. Even people who suffered for twenty years were able to live free of pain like happy human beings once again. DON'T GIVE UP HOPE. IMDRIN works internally promises you a better life. IMDRIN is non habit forming, proven safe when used as directed. Try IMDRIN today. If you don't agree it is the fastest arthritic and rheumatic pain reliever you've ever tried, return for money back. Get IMDRIN at your favorite drug store today . . resume comfortable living tonight.

AT FAY DRUG STORES, FORD HOPKINS, GOLDBLATT'S, LIGGETT-REXALL DRUGS, SEARS, ROEBUCK AND CO., STINEWAY, WALGREEN, WIEBOLDT'S, AND DRUGGISTS EVERYWHERE.

Amazing Discovery for Rheumatism, Arthritis

No Faster Arthritic Pain Relief Known

Developed After Three Years of Extensive Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Where Rheumatic Pain Strikes ... And How to Detect It!

Rheumatic and arthritic pain and inflammation can strike the joints in any of the indicated affected areas. (See arrows in illustration at right.) But these diseases have many forms and each form has varying symptoms.

Hospital and clinical test patients receiving IMDRIN, some of whom had suffered hopelessly for as long as twenty years, were able to resume more happy, active living once the pain subsided and their confidence grew. IMDRIN, working internally, eased pain rapidly. IMDRIN today is your great hope. IMDRIN with the new ingredient, may give you the same blessed successful results. Get IMDRIN today!

SAFE—HOSPITAL TESTED

Stops Swelling .. Uncorks Joints .. Contains Sensational Research Discovery

NEW, SAFE, SCIENTIFIC TABLET

Not a Narcotic ... Not Habit Forming ... AT LAST THE STORY CAN BE TOLD! Medical science has turned its attention to relieving the agonizing pains caused by rheumatism and arthritis. The result of extensive research is a wonder-working ingredient which is now combined with other pharmaceuticals into a remarkable preparation called IMDRIN. Longtime sufferers from rheumatism, arthritis, neuritis, and gout may find IMDRIN gives glorious relief so sensationally fast it's really amazing! There's nothing faster available to the public today. Contains no dope or harmful drugs. Only after three long years of clinical work and hospital testing was this fast, safe pain-killer developed, but today it is REALITY. If you suffer rheumatic pain ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture

Men, why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with IMDRIN.

NEW ... SAFE ... SCIENTIFIC

IMDRIN

IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs ... is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

Resume a More Normal More Active Life

For fast pain relief try IMDRIN, the amazing, new scientific discovery. IMDRIN is one of the finest reliefs from arthritic pain known to medical science.

The torturous pain of arthritis is a destroyer of good looks — makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. Only $1.00 with satisfaction guaranteed or your money back.

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK ...

AT FORD HOPKINS • GOLDBLATT BROS. • LIGGETT'S • REXALL DRUGS • SEARS, ROEBUCK • STRAWAY • WALGREEN'S WESCOLDT'S AND DRUGGISTS EVERYWHERE.

Amazing Discovery for Rheumatism, Arthritis

No Faster Arthritic Pain Relief Known

Developed After Three Years of Extensive Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, tenderness, and swelling in the joints. Every victim of rheumatic, arthritic, neuritis, sciatica, gout, neuralgia, should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Where Rheumatic Pain Strikes ... And How to Detect It!

Rheumatic and arthritic pain and inflammation can strike the joints (one of the indicated affected areas. (See arrows in illustration at right.) But these diseases have many forms and each has its varying symptoms.

Hospital clinical test patients receiving IMDRIN, some of whom had suffered hopelessly for as long as twenty years, were able to resume more happy, active living once the pain subsided and their confidence grew. IMDRIN, working internally, ended pain rapidly. IMDRIN today is your great hope. IMDRIN with the new ingredient, may give you the same blessed successful results. Get IMDRIN today!

SAFE—HOSPITAL TESTED

Stops Swelling .. Uncorks Joints .. Contains Sensational Research Discovery

NEW, SAFE, SCIENTIFIC TABLET

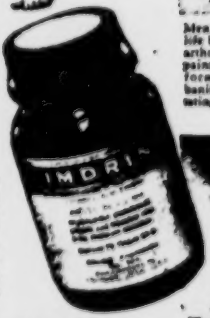
Not a Narcotic ... Not Habit Forming ... AT LAST THE STORY CAN BE TOLD! Medical science has turned its attention to relieving the agonizing pains caused by rheumatism and arthritis. The result of extensive research is a wonder-working ingredient which is now combined with other pharmaceuticals into a remarkable preparation called IMDRIN. Longtime sufferers from rheumatism, arthritis, neuritis, and gout may find IMDRIN gives glorious relief so sensationally fast it's really amazing! There's nothing faster available to the public today. Contains no dope or harmful drugs. Only after three long years of clinical work and hospital testing was this fast, safe pain-killer developed, but today it is REALITY. If you suffer rheumatic pain ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture

Mrs., why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with IMDRIN.

NEW ... SAFE ... SCIENTIFIC

IMDRIN



IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs ... is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

Resume More Normal Active Life

Be fast pain relief by IMDRIN, the amazing new scientific discovery. IMDRIN is one of the fastest relievers of arthritic pain known to medical science.

"The torturous pain of arthritis is a destroyer of good looks—makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. Only $1.00 with satisfaction guaranteed or your money back.

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK ...

AT WALGREEN'S • STINEWAY • GOLDBLATT'S • FORD HOPKINS LIGGETT-REXALL DRUGS • WIEBOLDT'S • FAY DRUG STORES SEARS, ROEBUCK AND CO. • AND DRUGGISTS EVERYWHERE

29 Barfield Exhibit F.

Amazing Discovery for Rheumatism, Arthritis

FEDERAL TRADE COMMISSION
Docket No. 7491 Comp. Exhibit No. 29
MATTER OF Thorne Pharmacal
Rec'd
Returned

No Faster Arthritic Pain Relief Known

SAFE—HOSPITAL TESTED

For fast pain relief try the amazing, new scientific discovery, IMDRIN. Start a wonderful new pain-free life, or your money back.

SAFE SCIENTIFIC **IMDRIN**

IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

"...elements with IMDRIN. It's a wonderful feeling when you can again completely enjoy everyday life.

Free yourself from pain and agony. Leading medical men endorse IMDRIN as one of the fastest reliefs from arthritic pain known to medical science. Buy IMDRIN now!

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK....

AT WALGREEN'S • STINEWAY • GOLDBLATT'S

FORD HOPKINS • LIGGETT-REXALL DRUGS • WIEBOLDT'S

FAY DRUG STORES • SEARS, ROEBUCK AND CO.

AND DRUGGISTS EVERYWHERE

The torturous pain of arthritis is a destroyer of good looks—makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. It's easy to use—easy to get at your nearest drug store. Only $3.00 with satisfaction guaranteed or your money back.

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7960

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ask your druggist TODAY
for AMAZING, NEW, SAFE

IMDRIN

HOSPITAL TESTED
Contains No Dope
or Harmful Drugs

FEDERAL TRADE COMMISSION

FAST PAIN RELIEF

for Rheumatic, Arthritic

SUFFERER'S

DRUG STORE NAME HERE
or
ON SALE AT THIS DRUG STORE

AMAZING NEW **IMDRIN**

GAVE THESE SUFFERERS BLESSED RELIEF EVEN AFTER 20 YEARS OF PAIN AND TORTURE

SEE OTHER SIDE... LEARN WHY

IMDRIN GIVES FAST PAIN RELIEF

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JAN 10 1949
OFFICE OF
LEGAL INVESTIGAT

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IMDRIN *Can help you!*

IMDRIN is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis.

IMDRIN was clinically tested and researched for three full years before release to the public.

Before it was released to the public, IMDRIN underwent long and rigorous testing under the direction of competent doctors in major hospitals and clinics. These researches proved that IMDRIN was one of the fastest and safest remedies known for alleviating the miseries of the rheumatoid state and arthritis.

Further, these physicians discovered that not only was IMDRIN an efficient medicament for the relief of the symptoms of these infirmities, but also, it was completely non-toxic in the dosages used and recommended. Stomach distress, which usually accompanies symptomatic treatment of these diseases by previous methods, was virtually eliminated, enabling more intensive treatment for quicker relief of pain.

NO MORE "BLUE DAYS"

In addition, the mental depression that sometimes resulted from therapy in these ailments was not found to be of major significance when IMDRIN was used as indicated. "Blue days" disappeared, and patients resumed their usual cheerful outlook on life. This is of utmost importance, since there seems to be a definite relationship between the onset of arthritis and mental condition.

Resume Comfortable Living!

It must be emphasized that IMDRIN was designed not only to help relieve pain, swelling and stiffness, but also to act by physiologically significant routes. Thus, the excretion of uric acid, which is held to be of significance in the therapy of gout, is increased by certain constituents incorporated in IMDRIN, aiding sufferers from that painful disease to regain a comfortable living status. To further assist relief from the discomfort of neuritis, which sometimes exists concurrently with the rheumatoid or arthritic state, and to aid in maintaining that feeling of well-being so significant in symptomatic therapy, thiamine chloride (Vitamin B1) is included in the IMDRIN formulation. For aid in and insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese and succinate have been scientifically combined for maximum effect.

FAST LONG-LASTING RELIEF

It will be found that IMDRIN gives prompt, effective, and long lasting relief from the symptoms of the rheumatic and arthritic state when used as recommended. Two tablets before each meal taken with a glass of water usually suffice for relief in stubborn cases. As the symptoms subside, the number of tablets taken may be reduced. Remember that it is much better to continue taking IMDRIN for some time after all symptoms have disappeared. This will aid in preventing the recurrence of pains and stiffness.

IMDRIN is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis and certain forms of rheumatism, sciatica and neuritis. To back up its claims, the distributors of IMDRIN stand ready to return your money if you do not get the relief you desire. All druggists have IMDRIN. Ask for it TODAY.

IMDRIN FAST PAIN RELIEF

IMDRIN FAST PAIN RELIEF

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764

RECEIVED OCTOBER 28, 1948

FEDERAL TRADE COMMISSION
Docket No. 3689
IN THE MATTER OF
DATE 7-27-50

32

Tilden Rose
Research

32

EX 200

IMDRIN

DIRECTIONS

FOR ADULTS ONLY. Two tablets before each meal with water, or as recommended by physician. If condition persists, see your physician.

(Formerly Called Emdrin)

As an aid in the relief of muscular aches and pains

Contents 72 Tablets
$3.00

Rugby Pharmacal Co., Inc.
Sole Distributors
CLEVELAND OHIO U. S. A.

Each tablet contains:

Manganese Salicylate, Calcium Succinate, Acetylsalicylic Acid, Thiamine Chloride (1 mg.) and Caffeine.

Imdrin is not intended for vitamin therapy.

COMMISSION'S EXHIBIT NO. 37.

IMDRIN Can help you!

Resume Comfortable Living!

FAST LONG-LASTING RELIEF

NO MORE "BLUE DAYS"

IMDRIN FIRST PAIN RELIEF

IMDRIN FIRST PAIN RELIEF

...k your druggist TODAY
r NEW, SAFE

IMDRIN

HOSPITAL TESTED
Contains No Dope
or Harmful Drugs

FAST PAIN RELIEF

for Rheumatic, Arthritic
SUFFERERS

ON SALE AT THIS DRUG STORE

RHODES PHARMACAL CO., INC.
1814 E. 40th St. ,Cleveland 3, Ohio

REMARKABLE NEW IMDRIN

GAVE THESE SUFFERERS BLESSED RELIEF EVEN AFTER 20 YEARS OF PAIN AND TORTURE

*Posed by Professional Models

SEE OTHER SIDE... LEARN WH...

IMDRIN GIVES FAST PAIN RELIEF

301 COMMISSION'S EXHIBIT NO. 39.

State of Illinois, } ss.
County of Cook. }

In the Matter of
Rhodes Pharmacal Company, Inc.

Affidavit.

Seymour W. Weisberg, being first duly sworn, on his oath deposes and says that he resides at 3520 Lake Shore Drive, Chicago, Illinois; that he is a practicing physician, specializing in internal medicine, in the City of Chicago, with offices at 55 E. Washington Street, having been duly licensed to practice medicine in the State of Illinois; that he received his M. D. Degree from Rush Medical College in 1936.

Affiant further states that he had a residency in medicine, Cook County Hospital, Chicago, Illinois, was on the staff of the Michael Reese Hospital, Chicago, Illinois, was a member of the faculty of Rush Medical College, Chicago, Illinois, from 1939 to 1942 and of the University of Illinois College of Medicine from 1942 to 1947, teaching internal medicine, including rheumatism and allied disorders, was an associate attending physician at Cook County Hospital from 1941 to 1944, and was an officer in the Medical Corps of the Army of the United States from 1944 to 1947. Affiant further states that he was elected a member of the Phi Beta Kappa and of the A.O.A., an honorary medical scholastic society, and is now a member of the Chicago and Illinois Medical Societies and of the American Medical Association. Affiant further states that he is a Diplomate of the American Board of Internal Medicine.

Affiant further states that as a practicing physician, he has had considerable experience in the diagnosis and treatment of the various types of rheumatism and arthritis
302 and the manifestations of these two classes of disease. Affiant further states that rheumatism is a generic term covering a variety of conditions, which have in common the presence of pain in some portion of the locomotor system. So widespread is the disorder, that it may safely be said that everyone suffers from it at least once,

if not many times, in the course of his life. "Muscular rheumatism," or painful muscles, is a particularly common type of rheumatism, and in the majority of instances it is primary—that is, not associated with or resulting from any other body disorders. In relatively few instances, the condition is secondary to some generalized disorder affecting the individual, but in such cases, the muscle pains are obviously of secondary importance, to the point where they are frequently overlooked entirely, and the attention of both patient and doctor is at once focused on symptoms which are obviously more significant, and more in need of attention. For example, the patient who suffers from gonorrhea and who, as a result thereof, develops muscular aches, will not be concerned primarily with the concomitant aching of the muscles. For the more common, primary type of muscular rheumatism, there is no known specific therapy, and the patient can expect little more than the application of measures designed to provide relief from the pain. It is apparent, however, that the relief of pain constitutes in itself an important aspect of therapeusis. Narcotics would, of course, effectively provide relief from the pain, but because of the ever-present danger of addiction, their use is interdicted. Of the other available analgesics, none has been used more widely, accepted by the medical profession more wholeheartedly, or dispensed in greater quantities, than have actylsalicylic acid and the salicylates. Indeed, it may be said that in all probability their use constitutes the most commonly employed measure in the treatment of rheumatic disorders.

Affiant further states that what has been said about muscular rheumatism applies in essence to articular rheumatism—pain involving the joints. Again, there is a
303 division into the far more common primary and the rare secondary types, and again there is a striking and unfortunate absence of specific measures to be employed in the treatment of the former type. Once again, salicylates, because of their effectiveness, their absence of toxicity, and their freedom from the danger of addiction, play a most prominent role in treatment. On this point, all workers in the field are agreed. In rare instances, joint pains are but the manifestation of some other disease affecting the body, but then it is evident even to the patient, because of the severity and number of associated symptoms, that such pains stem from another disturbance, are

in themselves obviously only of secondary importance, and need not be the object of treatment.

Affiant further states that in the symptomatic treatment of rheumatism, the salicylates play a unique role, the importance of which it is difficult to exaggerate. Their effectiveness is attested to by the frequency with which physicians prescribe them, and by the countless thousands of patients who depend on them for the relief of pain which would otherwise be incapacitating. Indeed, it may be said that, since specific therapy is largely unavailable in the treatment of rheumatism, it is truly fortunate that at least these drugs are at hand. The preparation Imdrin includes in its formula acetylsalicylic acid and manganese salicylate, and these drugs may be regarded as its most active ingredients, and those which confer on it analgesic properties. Those foregoing statements which have been made in connection with salicylates will be equally valid in regard to Imdrin, in view of its salicylate content. Examination of the statements made by the manufacturer indicates that the medication is not represented as a cure.
304 It should, as claimed, provide symptomatic relief from the aches and pains of rheumatism, and, if taken according to instructions, should not produce any harmful or dangerous effects.

Seymour W. Weisberg. (Seal)

Subscribed and Sworn to before me this 13th day of February, A. D., 1951.

Arthur O. Gettleman,
Notary Public.

COMMISSION'S EXHIBIT NO. 40-A. 771

MEDICINE SURGERY

OCCUPATIONAL DISEASES
TRAUMATIC, INDUSTRIAL

INDUSTRIAL MEDICINE
& RAILROAD SURGERY

Industrial Medicine | Volume 8 FEBRUARY, 1939 Number 2 | Industrial Surgery

505

The Treatment of Arthritis

- and Associated Conditions: A Preliminary Report

LAURENCE H. MAYERS, M.D.,
and
S. K. LIVINGSTON, M.D.

THROUGH clinical trial the profession has learned that the various forms of therapy advised for arthritis show a limited percentage of favorable responses to treatment. Not uncommon in the literature on this disease are accounts that report improvement in 60% of 180 cases; 65% of all cases; 47% of 100 cases; 48% of 27 cases. Despite the many forms of therapy employed, however, there remains a large number of patients who are unimproved, regardless of the treatment given. These persons form that great army of unrewarded arthritics who eventually become chronic cases and who present a sharp challenge to the profession.

Early in 1938, one of us (L.H.M.) received upon request through an English investigator a small quantity of "a parenteral acid preparation"* reported as having been successfully employed in the treatment of arthritic patients. The initial experience stimulated active interest, leading to the employment of this preparation in a series of 105 cases, most of them the chronic type referred to above. With these patients we believe we have demonstrated clinically the superiority of the new treatment over other forms of arthritis therapy in respect to (1) rapidity of action, (2) absence of reactions, and (3) safety.

Ten years ago, Dr. Eduard Lyss, of Biel, Switzerland, developed a form of therapy for the administration of three commonly used therapeutic agents: sulfur, iodine, and formic acid combined with a terpene. In its present form the new preparation represents a refinement of that original combination. Per cubic centimeter, it contains formic acid, 0.0018 gm.; 95% alcohol, 0.055 cc.; iodine, 0.004 gm.; sulfur, 0.0002 gm.; terpene (camphene from Borneol camphor) 0.0001 cc. with distilled water q.s. ad 1 cc. The combined amount of the component drugs is equivalent to one drop. Terpene enters into the formula as a volatilizing agent, rather than for any therapeutic action of its own.

* Medical proprietary preparation, known as Arthritis II.

Medical science is familiar with the pharmacodynamics and therapeutic action of all the components of this new product so far as studies of their action have been recorded. Each has been accorded its place in the materia medica and each has been used in the treatment of arthritis. However, these three drugs combined with a terpene form an entirely new preparation, creating a synergistic action already proved to have a unique value, therapeutically.

Professor-Doctor Hans Eppinger,[2] of the University of Vienna, has carried on much of the clinical and experimental work with the preparation during the last four years at the First Medical Clinic in Vienna. Two of his associates, Drs. Erlsbacher and Burger, reported the following[3] concerning their cases under treatment:

TABLE I
RESULTS OBTAINED IN 103 CASES OF ARTHRITIS AND ASSOCIATED CONDITIONS
at the
FIRST MEDICAL CLINIC OF VIENNA —
DOCTOR HANS EPPINGER

No.	Cases	Injections	Complete Imp. %	Slight Imp. %	Negative
50	Acute Myalgies	3-4	100		
	Chronic Myalgies	8-20	84	12	4
28	Acute Neuralgies	6-8	100		
	Chronic Neuralgies	12-20	65	30	5
9	Humero-Scapular Arthritis	8-12	75	25	
16	Sciatica	3-20	85	10	5

The new preparation produces its most spectacular results in acute cases, such as the acute myalgies, neuralgies, muscle spasm, and lumbago. In chronic cases, the period of treatment necessary before there is a definite clinical improvement is from three to six months, results which other procedures for the treatment of arthritis and associated conditions have seldom demonstrated. The relief of sciatica and lumbago has been dramatic in its suddenness and in the number of favorable responses to treatment. The immediate relief of pain and the removal of muscle spasm, which we have shown in a greater percentage of cases under the new parenteral acid therapy than with other forms of treatment, provides a valuable subjective response on the part of the patient. Similarly, there is favorable objective response in the return of normal circulation in the affected part with the subsequent production of a more normal function.

In our work we have found no malaise or digestive or bowel upsets attendant upon or following the injections. This factor greatly widens the range of application and effectiveness of the treatment, for, of the some 2,200 proprietary preparations for the treatment of arthritis, 40% depend upon the digestive organs for tolerance and subsequent absorption into the tissues and circulatory system for distribution. The variability of the range of tolerance of the digestive system and the time required for the drug to reach and aid the af-

fected part indicate something of the inconstancy of the results obtained by such means. The new preparation obviates these factors and thus its more extensive use is permitted.

This new product produces no anesthetic changes. It is not an anesthetic. It does not affect mobility or the reflexes in the injected part and each may be demonstrated without impairment immediately following injection.

The mode of action of the new preparation is admittedly obscure and empiric. It is thought that the components in the presence of the terpene are diffused and disseminated in the tissues in an action comparable to that evidenced in greater molecular dissociation. The therapeutic principle of the parenteral acid therapy is presumably the restoration of normal circulation in an affected part, the elimination of toxins resulting from tissue damage, and the production of lymph flow with the resultant removal of tissue edema. Such action permits cellular repair and a return to a more normal function. This new therapy has the advantage of producing such results immediately and safely by injection into the involved and adjoining areas.

In short, the new parenteral acid therapy is a safe, convenient, and quick office procedure, which requires no elaborate equipment for its administration. Its effectiveness in the treatment of arthritis is indicated not only in the patient's subjective responses, but also in very notable objective improvements.

Prodromal symptoms such as cramps, weakness of muscles, muscular wasting, paraesthesias, vasomotor disturbances of the extremities, tremors, and fatigability can be relieved by this form of treatment, we find. The course of the disease, which reduces the general health and aggravates the symptoms, can be abated with this therapy more quickly than with any other therapy used in our combined experience. The new preparation relieves muscle spasm and reduces pain, thus allowing active movement early in the course of the disease. In this way, faulty positions and deformities can be prevented. When arthritic manifestations in both the small and large joints are advanced and when muscular pain and wasting are extreme, the new therapy is more effective than any combination of other measures we have employed.

The assumedly less virulent germs, considered as commonly present in arthritis, are not overly toxic or destructive to tissues. Such tissues as are assaulted by these bacteria are given an excellent chance for repair when normal circulation can be rapidly restored to the involved area. From our clinical observations, we think that the new parenteral acid therapy activates the restoration of normal circulation. Despite the fact that this action may be only temporary, its repeated application, it is believed from our clinical experiences, will allow the tissues to secrete their normal efficient ferment and thus promote healing.

This is a form of therapy that will remain in the hands of the physician during the entire course of the disease. It cannot be prescribed by the druggist to the laity. The pseudo-scientist, because of his lack of familiarity with regional anatomy as employed in regional anesthesia, cannot use it.

Rationale of Injection

THIS is one of the few drugs that requires a definite technic for its administration, such technic being best learned by demonstration. The proper technic in the handling of this procedure demands the knowledge of regional anatomy that is used in regional anesthesia. This, with most doctors, merely requires a review of former experience and knowledge.

In examining the affected part, the area is thoroughly palpated for local points of tenderness and muscle spasm. These areas usually follow the innervation of the region and, when localized, the hypodermic injection is given directly into the tender points. When generalized pain is present over the entire arm or leg, the injection is made into the region of the main nerve supplying the part. Immediate relief, in acute cases and acute exacerbations in chronic cases, usually follows such perineural injections even though the site of injection is not into the actual involved area. In the involvement of the entire shoulder and arm, immediate relief is usually provided by brachial block from the supraclavicular approach.

With pain in the hands and feet, the involved areas are relieved by injections about the nerves in the forearm and lower leg, respectively. In acute inflammatory pain in the great toes—gout, for example—one or two injections directly into the base of the inflamed area will usually suffice. In cases of knee edema and pain, the area is injected at painful tender points as localized by palpation. The likely response to this procedure is a reduction in acute edematous swelling, the abatement of pain and muscle spasm, and a return to a more normal function in the area. The parenteral acid therapy differs from other methods used in the relaxation of muscle spasm in that there is no associated systemic reaction following the injections.

Backache and the associated sciatic syndrome comprise a large part of the complaints that many patients offer. The problems of diagnosis of the proper etiology and the manner of the production of the symptoms require a thorough physical examination, an x-ray check-up, and a differential diagnosis of the various possible causes. Foremost among the latter are traumatic backache, postural backache, reflex backache, low backache from diseased facets, sacro-iliac strain and subluxation, and local tissue derangement. The work-up necessary for diagnosis usually entails considerable time during which period the distressing symptoms persist. It is during this interval that the therapy here described lends itself advantageously to the relief of pain; this factor, in turn, makes for greater cooperation on the part of the patient.

In acute low back pain, when local areas of tenderness are not found, the injection is made with a one-inch needle, deep into the lumbar musculature. The same procedure is followed in lum-

3.7 [redacted] FEDERAL TRADE COMMISSION Exhibit No. 664 / Docket No. 5470 - C

nagues. In sacro-iliac complaints, the injection is made directly over the area, care being taken to avoid injuring the periosteum with the needle.

The immediate burning sensation accompanying nearly all injections, regardless of site, passes within a few seconds after injection. The amount given per injection ranges from ½ to 5 cc., depending on the site and amount of involvement. Effective treatment usually requires several such injections about the affected parts. Total injections at one time up to 10 or 20 cc. have occasioned no malaise or toxicity, nor do the injections produce anesthetic changes.

The clinical evidence for our findings concerning this new therapy rests, as we have stated, in a series of 105 cases, clinically investigated and treated over the past six months. In reporting these cases, we have relied on both objective and subjective findings. The bulk of the cases comprising this report are chronic arthritics. Hench and others[1] say that the usual debate as to classification of arthritis finds some workers "considering atrophic and hypertrophic arthritis varieties of one disease, differences being chiefly due to the factor of age, physiologic rather than calendar. To them atrophic arthritis represents the reaction of physiologically young tissues against an insult; hypertrophic arthritis is the reaction of physiologically aging tissue against the same insult."

Typical of our findings are the following 20 cases treated at the hospital clinic and in our private practices.

Case 1. A research engineer, aged 40, complained of pain over the lumbar and coccygeal regions and over both sacro-iliac joints for a period of 18 years; more recently, pain and intense discomfort coupled with swelling have developed over the left heel and between the right great and first toes.

Examination revealed purpura hemorrhagica distributed downward over the legs. There was pain and tenderness over the lumbar and coccygeal regions, extreme tenderness over the left heel, painful swelling between the right great and first toes, and intense pain along the course of the right sciatic nerve.

X-ray studies of the spine, knees, ankles, and feet showed bony spurring on the bodies of the vertebrae and roughening of the articular surfaces of the knees, ankles, and the small bones of the feet characteristic of osteoarthritis. There was also some demineralization of the bones of the feet.

Treatment during the course of his disability began with the removal of fragments of the lumbar spinous processes following a saddle injury to the lower lumbar region. This was followed one year later by reoperation and curettment. Other treatment consisted of Swedish massage, accompanied by cabinet, tub, and mineral baths, one to two times a week for 18 years; infra-red and ultra-violet light treatments every two weeks for 18 years; a course of potassium and iodine injections weekly for six months; and fever treatments for five months. On June 6, 1938, he entered the hospital for additional treatment.

Aciform II therapy was instituted on September 7, 1938. He received a total of 5 cc. at six sites along the right sciatic nerve, over the left os calcis, and between the right great and first toes. Six treatments were given at weekly intervals.

Following the first treatment, he received relief from pain for 12 hours in all areas injected. Following the third treatment, he was able to wear shoes for the first time in two years. By the end of the series, he had improved markedly. Now more physically fit than at any time since the original injury, he is able to resume his work.

Case 2. An office worker, aged 50, was admitted to the hospital on August 29, 1938, suffering from severe pain in the lumbosacral region and along the course of the right sciatic nerve. The pain had developed progressively. The diagnosis was hypertrophic arthritis with acute sciatica on the right side.

Findings at the physical examination were essentially negative except for the localized injury over the sacro-iliac region and demonstrable pain along the course of the right sciatic nerve.

The x-ray diagnosis, in view of the early bony proliferation about the neck of the right femur and acetabulum, was hypertrophic arthritis.

Previous treatment consisted of the following: Diathermy, twice weekly for six weeks; massage, three times a week for six weeks; exercise, six weeks; local heat, six weeks; and supportive measures, five weeks. There was no improvement in symptoms.

Aciform II was first injected on September 8, 1938, with three 1-cc. doses into the right gluteal region and leg, as shown in Fig. 1 B. A total of three treatments were given at the weekly clinic.

The first treatment brought relief from pain for 72 hours; four days relief followed the next treatment, and after the third treatment, the sciatic pain disappeared and the patient volunteered to leave the hospital and return to work.

Case 3. A waiter, aged 54, had pain involving the feet, hands, left elbow, and lower cervical spine. The pain had been present over these areas since 1931, during which period there had been a gross enlargement of the knees together with marked limitation of motion. The pain and symptoms could not be accounted for in any previous infectious illness. Examination revealed spasm over the erector spinae muscle group, together with marked reduction in grip and painful swelling over all the involved joints.

Roentgenographic examination of the entire spine and multiple joints revealed the roughening of the joint spaces and the bony spurring on the vertebral bodies indicative of atrophic arthritis. Enlargement of both knees suggested synovitis.

Previous treatment had consisted of symptomatic medication, seven years; active and passive exercise, seven years; contrast baths, seven years; diathermy, five years; supportive measures, seven years; and local heat, seven years. No lasting benefits resulted from any of these measures.

Aciform II therapy was first begun on September 7, 1938. He was given four weekly treatments,

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each consisting of local injections about the knees and adjacent involved areas.

Relief from pain was noted for 18 to 24 hours following the initial treatment. With subsequent treatment, there was progressive diminution in the amount of pain and disability. At the end of the course, the patient returned to his work.

Case 4. A railroad fireman, aged 48, complained of joint pains over the right elbow, both hands, both ankles, both feet, and cervical spine. The original involvement began in the wrists in 1927. The following year, he suffered an injury to the right elbow and the arthritic process progressed to both hands, ankles, feet, and cervical spine. Except for a compensatory left dorsal, right lumbar scoliosis, swelling of the interphalangeal joints, and limitation of motion in the right shoulder and elbow, the physical examination was negative.

X-ray examination of the cervical, dorsal, and lumbar spine and the sacro-iliac joints showed evidence of atrophic arthritis. There was roughening of the articular surfaces of the ankles, the small bones of the feet, the hands, and the wrists, resembling arthritis.

Previous treatment had consisted of the following: Exercise, 11 years; diathermy, six years; local heat, eight years; massage, twice weekly for 11 years; symptomatic medication, 11 years; and contrast baths, once weekly for 10 years.

Acriform II injections were given at weekly intervals for three weeks into the lower cervical and adjoining involved areas in conjunction with local injections into the right arm and wrist. On one occasion, a brachial block was given as illustrated in Fig. 5.

The swelling about the elbow was reduced and all joint pains were relieved with the single exception of general pain over the right wrist and hand.

Case 5. A stockbroker, aged 50, had, in addition to pain and swelling over both ankles and both sacro-iliac joints, pain, stiffness, and limitation of motion over the lumbar and thoracic spines. Onset of symptoms began four years previously and he had been hospitalized for several periods, each of several months duration.

The physical findings indicated that indefinite pains were present about the spine and multiple joints, but that the acute symptomatology referable to arthritis had subsided. There was slight restriction of motion over the spine and visible erector spinae muscle spasm. Pain was evidenced on deep percussion over the spine and sacro-iliac joints.

Roentgenographic studies of the spine, sacro-iliac and multiple joints showed spurring of the bodies of the vertebrae, partial fusion of both sacro-iliac joints, and roughening of the articular surfaces of various joints. All findings were characteristic of osteoarthritis.

Previous treatment had included two courses of fever therapy accompanied by massive doses of vitamin D. In both cases, he received only temporary relief from pain and symptoms.

Acriform II therapy was begun on October 25, 1938, and continued through November 9, 1938, during which time a total of three treatments was given. Each treatment consisted of multiple injections along the course of the spine and about the neck.

The patient responded promptly to the injections; there was immediate relief from pain over the entire back, following the initial treatments. On the occasion of the first treatment, palpably

Fig. 1-A.

Fig. 1-B.

Fig. 2.

Fig. 1-A (Case 1): The course of the deep peroneal nerve posteriorly, to its terminal branches in the great and second toes. Fig. 1-B (Case 1): Posterior view of the leg showing the injection points along the course of the sciatic nerve and the posterior tibial nerve. Fig. 2 (Case 3): Points of injection about the knee in arthritis and traumatic contusions

spastic muscles over the mid-back were immediately relaxed and there has been no return of spasticity.

CASE 6. A professional man, aged 45, awoke with severe pain in the right back accompanied by stiffness and marked restriction of motion. The symptoms persisted over a period of four days, during which time heat and rest effected no change in symptomatology. Examination revealed erector spinae muscle spasm. Aciform II was given on one occasion directly into the muscle belly on the right side with immediate relaxation of spasm and immediate cessation of pain, stiffness, and disability.

CASE 7. A general laborer, aged 45, had sciatic neuritis on the right side and pain over the wrists and ankles. This condition had been present over a year. After leaving the hospital in the fall of 1935, at which time he was treated for a chip fracture of the ankle, he remained in good health until December, 1937, when severe pain developed in the back. It then progressed to the wrists, ankles, and adjacent areas. Tonsillectomy relieved him of pain so that he was able to walk. However, despite this measure, the pain persisted to a slight degree, and recently had grown worse.

Fig. 5.

(Case 5): The points of injection into the musculature over the lumbar nerve roots of the lower back. Also shown are the points of injection for the sacro-iliac joints

There were no physical signs of injury or inflammation. There was pain in the right leg, extending from the buttocks down the posterior aspect of the leg and on the lateral side of the calf. The x-ray findings were essentially negative, showing no bony changes that would account for the pain.

Previous treatment had consisted of massages, twice weekly; hot and cold baths, twice weekly; daily exercise; removal of foci of infection; and local heat and light, three times weekly over the past year. Only temporary relief was received.

Weekly intervals on three occasions, he received Aciform II injections at sites along the course of the right sciatic nerve. The marked relief of the leg pain, which previously had been so evident on motion, as well as the relief of the back pain, caused the patient to leave the hospital voluntarily.

CASE 8. A railroad worker, aged 53, had pain over the course of the left brachial plexus. After suffering a crushing injury to the left shoulder and upper arm in 1929 while coupling freight cars, he had a persistent pain, as well as tenderness and limitation of motion, especially over the deltoid area; coupled with this was marked weakness of the muscles of the arm and forearm.

With the exception of the painful area surrounding the site of the original injury, the examination was essentially negative. There was revealed marked atrophy of the muscles over the shoulder girdle and similar atrophy extending over the entire arm and forearm. Weakness was evidenced by nearly complete loss of function.

Previous treatment consisted of nine year's rest; opiates; infra-red treatments, twice weekly for nine years; and massage, once weekly for nine years. No beneficial results were obtained.

Aciform II therapy was instituted August 30, 1938, with weekly injections until September 20, 1938. Each treatment consisted of injections as brachial blocks as well as local infiltrations over the lower cervical spine and along the borders of the trapezii.

Relief from pain was immediate and he was able to sleep after the first treatment without the administration of opiates. Clinical improvement progressed with each additional injection until a series of five treatments had been completed. At the close of the series, pain had disappeared and an almost complete range of motion had been restored to the left arm.

Fig. 6.

(Case 7): The course of the sciatic nerve and its division into the common peroneal nerve and the posterior tibial nerve

CASE 9. An office worker, aged 44, complained of neuritic pain associated with a fracture of a spine graft. After a Hibbs-Albee spinal fusion for spondylolisthesis in 1934, the patient remained free from osteo-arthritic symptoms until April, 1938. At that time, there developed a sudden onset of severe lancinating pain in the coccygeal and lower lumbar region on both sides and also neuralgic pain radiating down both legs.

The physical examination was essentially negative except for the localized tenderness along the right side of the level of the third and fourth lumbar vertebrae and pain down both legs. Examination disclosed fixation of the graft at the level of the fifth lumbar vertebra, the fracture of the graft being at the level of the third and fourth lumbar vertebrae.

Previously, the patient had had massage, twice weekly, and heat (infra-red) and light treatment

weekly over a period of six months. These measures, instituted with the persistence of severe pain, failed to relieve his discomfort. It was thought advisable to open the fracture site for repair of the graft.

Two cc. of Aciform II were injected on August 29, 1938, at the level of the third and fourth lumbar vertebrae on the right side. There was immediate cessation of pain, both in the legs and lumbar region. There has been no recurrence of pain and further therapeutic or surgical methods are deemed unnecessary. Injection sites are illustrated in Fig. 3.

Case 10. A former layout man, aged 42, complained of pain and spasm accompanying a corrected fracture of the tibia and fibula. He entered the hospital on June 5, 1938, complaining of severe pain in the right leg, just above the ankle, accompanied by swelling and inability to place any weight on the foot. He reported that a misstep off a curb had resulted in this condition.

The ankle and lower leg were marked by pain on manipulation, as well as by tenderness and swelling. Examination disclosed a fracture of the right tibia and fibula just above the medial malleolus of the ankle.

Because this pain involved an area supplied by the sciatic and peroneal nerves, Aciform II was injected along the course of these nerves in an effort to relieve muscle spasm and pain. Relief of pain was obtained for 10 to 12 hours, permitting a more rapid convalescence, the withdrawal of opiates, and a return to normal diet. Figures I-A and I-B show injection sites along the sciatic and peroneal nerves.

Case 11. A barber, aged 40, complained of pain associated with a fracture of the right os calcis. He was admitted to the hospital on August 23, 1938, with swelling over the right heel and foot, in addition to pain and crepitus. This condition developed after he had struck the heel violently against a curb.

X-ray examination revealed a fracture of the right os calcis with upward displacement of the fragments. Previous treatment had consisted of medication and opiates.

On August 28, 1938, the patient was given one injection of 3 cc. Aciform II directly into the painful area. There was complete relief of pain for 10 to 12 hours, such relief permitting earlier operative correction and the withdrawal of opiates in the relief of pain.

Case 12. A general laborer, aged 42, had pain associated with osteomyelitis. In May of 1938, he ran a sliver into his right ring finger with resultant ascending cellulitis and lymphangitis. Although the finger was amputated, the stump area continued to drain and pain persisted.

The condition was diagnosed as osteomyelitis of the right hand and elbow. The disability, at this stage, showed subsidence of the cellulitis and osteomyelitis. However, there was marked muscular atrophy.

X-ray study of the affected area showed no further bone involvement. The right ring finger had been amputated at the first joint; the remainder of the finger was normal in contour.

One injection of 3 cc. of Aciform II was given as a brachial block (as shown in Fig. 5) for the relief of associated pain. The immediate cessation of pain which followed this treatment not only shortened the period of convalescence, but also permitted the withdrawal of opiates. There has been no recurrence of pain over the time of observation.

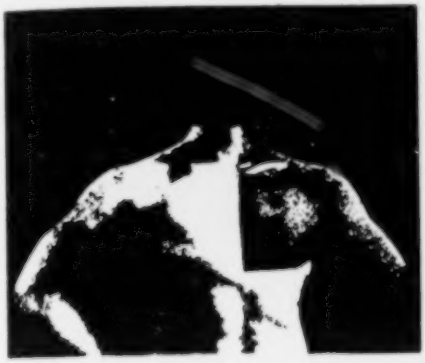

Fig. 5.

Fig. 6.

Fig. 5. (Case 9): The figure shows the point of injection for performing a supra-clavicular brachial block. The shaded area shows the nerve distribution over the shoulder and left arm. Fig. 6. (Case 16): Posterior view of the neck and upper back showing the points of injection over the posterior thoracic nerve roots and the cervical nerve roots. Also shown is the area of nerve distribution

Case 13. A lawyer, aged 50, complained of pain and stiffness in the neck, shoulders, arms, and back. Onset occurred 26 years ago and was first evidenced in a severe attack of sciatica. Spondylitis has been present for the last 10 years. Pulmonary tuberculosis, which originally appeared in 1909, recurred in 1918 following a series of five hemorrhages. During this, the last siege with tuberculosis, his weight fell off to 100 pounds.

The physical findings revealed spondylitis involving the cervical, dorsal, and lumbar spines with practically complete ankylosis of the lumbar spine. Marked pain and crepitus were exhibited in the shoulders and the muscles over the shoulders and neck were spastic. His weight at time of examination was 150 pounds.

Roentgen examination of the chest showed healed tuberculous lesions of both upper lobes. X-rays of the back disclosed marked hypertrophic arthritis of the dorsal and lumbar spines.

Record of laboratory examinations showed a leukocyte count over the past two years, averaging 7000, hemoglobin 97% (16.4 grams) and erythrocytes, 4,830,000.

Previous treatment consisted of diathermy, once weekly for six years; massage, twice weekly for six years; vitamin D, daily for six months; osteopathy, twice monthly for one year; vaccine, every four days for six years; "Hay diet," three years; and change of climate, three months per year.

Vaccine therapy controlled all of his acute exacerbations and relieved the pain in all joints with the exception of the neck. This pain had remained constant for two years.

Aciform therapy was instituted on June 30, 1938, with injections at the sides around the neck and into the shoulders. He received these injections over a period of four months, the treatments spaced a week apart.

The patient secured relief from the pain which eight years of vaccine therapy and the other treatment described had failed to accomplish. He is still continuing with the Aciform II treatment because of the comfort he receives in controlling muscle spasticity.

Case 14. A businessman, aged 41, complained of acute pain dating from a severe traumatic injury to the back 15 years previously. The back pain had been persistent over this time; also pain in the left leg had been present for several months past. Recent acute exacerbations of pain had been more severe than previously. The only severe illness was typhoid at the age of three. The tonsils were removed empirically in 1926.

Palpation, the patient exhibited acute tenderness and pain in the lower lumbar region, further aggravated by manipulation. There was also acute tenderness over the course of both sciatic nerves. The x-ray findings showed spondylolisthesis of the fifth lumbar vertebra.

Previous treatment had been as follows: Brace, 10 years; salicylates, five years; amytal and codeine each day, twice a week for five years; rest, three months, and baths, twice a week for three months.

Aciform II was first given on August 28, 1938, with injections into the gluteal regions as well as paravertebral lumbar injections as shown in Fig. 3. Similar injections were made into the posterior aspect of the left leg as shown in Fig. I-B. Treatments were spaced four days apart and were continued over a period of two months. After the second injection, pain disappeared completely and the muscular deformity was amazingly corrected. Treatment was continued with injections over the course of the sciatic nerves to relieve stiffness.

Case 15. A housewife, aged 60, complained that, 10 years previously, pain, tenderness, and stiffness in the back, hands, and knees had begun with acute onset. There was steadily progressive weakness and disability. During the course of the disease, acute exacerbations were confined to the hands and knees. The back pain remained constant. The patient's only major illness was an attack of measles during childhood. Despite this history, her tonsils and several devitalized teeth had been removed empirically without benefiting her condition.

Physical findings revealed no demonstrable changes in the joints with the exception of a moderate limitation of motion. Other findings were essentially negative. The diagnosis was hypertrophic arthritis.

X-ray examination of the knee-joints showed definite bony production changes, as well as lipping of the articular surfaces of both tibiae and the patellae. A marked scoliosis in the lumbar spine was a complicating factor.

Previous treatment consisted of massage, weekly for six months; cradle and carbon arc lights, twice a month for six months; contrast baths, twice monthly for two years; diathermy, once monthly for one year; and vaccine every four days for eight years.

While the patient was under regular vaccine treatment, the pain in the knees and hands disappeared and there were no acute exacerbations. The back pains failed to respond to any previous therapy.

Aciform therapy was begun on June 29, 1938, with bi-weekly injections over a period of four months. Injections were given in 1-cc. doses on each side of the lower back, as shown in Fig. 3.

The pain in the back has gradually disappeared. However, the treatments are being continued once weekly for the relief of stiffness, which is now gradually disappearing. Aciform was the first measure to which her back pains made any response.

Case 16. A physician, aged 63, complained of acute pain and tenderness in both wrists, arms, shoulders, back, and right middle finger. Symptoms were first evidenced in 1908 when there was some joint and muscular involvement following a severe attack of septic sore throat. Intermittent pain with acute exacerbations at irregular intervals continued until 1917 when the middle finger and both wrists became involved. These joints gradually became chronic in character, and more recently, the arms, shoulders, and back became involved.

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Our physical findings showed no deformity of the wrists, arms, shoulders, or back. The right middle finger was swollen and partially flexed at an angle of 30°. There was no limitation of motion, nor was there any redness or swelling except in the case of the middle finger. The diagnosis was hypertrophic arthritis.

Previous treatment consisted of the following: diathermy, twice a week for one year; massage, weekly for three years; vitamin D, three capsules daily for six months; vaccine, every four days for 12 years; change of climate, six weeks; local heat, daily for one month; removal of foci (as below).

There was no change in symptomatology following a tonsillectomy and he was not rewarded for the sacrifice of six devitalized teeth. The palliative measures described benefited him only temporarily. It is our impression that the vaccine therapy controlled his acute exacerbations of pain and stopped the progress of the deformity. Despite the continued use of vaccine, stiffness and pain in the shoulders and lower back persisted intermittently.

The laboratory findings were: Hemoglobin, 106% (18 grams); erythrocytes, 5,230,000; leukocytes, 6,500; urea nitrogen, 10.3 mgs.; sugar, 99 mgs.; cholesterol, 250 mgs.

Aciform treatment was instituted on June 28, 1938. Injections into the shoulders and back were continued every four days over a period of four months, after which treatment was discontinued because all symptoms had subsided.

Case 17. A businessman, aged 45, complained of pain over the lower back and leg along the course of the sciatic nerve for three years. The course of the disability had been progressive. There were no acute or chronic illnesses to account for the onset or course of his complaints. He was never subject to acute or chronic sore throat. Despite this previous history, the tonsils were removed empirically in 1935 with no effect on his sciatic condition.

Physical examination revealed the presence of diffuse tenderness and pain over the gluteal regions and along the course of the left sciatic nerve. The left leg was one-third the size of the right. There was marked atrophy and loss of muscle tone in direct proportion to the diminished size of the leg. Diagnosis was sciatic neuritis with disuse atrophy.

X-ray findings showed bony spurs on the bodies of the lower five lumbar vertebrae. At the fifth lumbar, the interspace was decreased in vertical diameter. There was lipping of the bodies of the fifth and sixth lumbar vertebrae. The bones of the feet showed arthritic changes, but there was no bony destruction.

Previous treatment consisted of the following: Aspirin, daily for three years; diathermy, twice weekly for one year; baths, weekly for three months; osteopathy, weekly for one year; vitamin D, two or three capsules daily for six months; and removal of foci. Intermittent, temporary relief followed previous treatments, but the weakness and muscle atrophy continued to progress.

The laboratory findings were: Hemoglobin, 94% (16 grams); erythrocytes, 4,700,000; leukocytes, 10,500; Wassermann, negative.

Aciform treatment was instituted on August 28, 1938, with injections at points indicated on Figs. 1-B and 3. Injections were given every fourth day for a total of eight treatments.

After the second injection, the patient was dramatically relieved of pain. He received eight additional injections after which he was discharged. After the return of normal function in the leg as the result of the relief of pain, the muscle atrophy disappeared and the tone was restored to normal.

Case 18. A businessman, aged 48, declared that 11 years ago, there was a sudden acute onset of pain in the right wrist, both knees, both elbows, and the left shoulder. Pain was present on both motion and rest. The acute attack lasted for six weeks. During the past 10 years, dinner-fork deformities developed in both hands, together with atrophy of the left arm to one-half the size of the right. The left arm became partially flexed at 130°. The last acute exacerbation involved the feet and ankles. There was no previous history of serious illness. The tonsils were removed empirically in 1931 with no change in the arthritic symptoms. Examination: There are dinner-fork deformities in both hands, the grip is broken, and it is difficult for him to touch the palms with the finger-tips. The left elbow is partially fixed at 130° and the shoulder is partially ankylosed. The feet are painful, swelling being marked over the right lateral malleolus. There is pain on motion of the toes, which are moderately restricted. Diagnosis is multiple infectious arthritis with fibrositis and moderate fixation.

Previous treatment consisted of colonic irrigation, once weekly for a year; x-ray treatment to joints, twice monthly for one month; change of climate, six months; infra-red, weekly for 10 years; baths, weekly for 10 years; massage, twice a week for 10 years; hydrotherapy, weekly for 10 years; diathermy, monthly for six years.

The laboratory findings showed hemoglobin, (17 grams); erythrocytes, 4,900,000; leukocytes, 9,400; urea nitrogen, 16.9 mgs.; non-protein nitrogen, 34.6 mgs.; cholesterol, 222 mgs.; sugar, 93 mgs.; creatinine, 1.3 mgs.; uric acid, 4.4 mgs.

On June 28, 1938, Aciform II injections were given and continued twice weekly over a period of three months. Injections were made into the ankles, cervical spine, shoulders, and the left arm. The therapy relieved pain in all joints with the exception of the elbows. Since the pain and swelling in the hands has been relieved, the function has been restored and the grip has returned to 80% of normal.

Case 19. A housewife, aged 60, for 13 years had persistent pain and deformity in the shoulders, hands, elbows, knees, and feet. There had also been pain in the jaws and back. She was persistently demoralized by weakness, fatigue, and mental depression since the onset of her symptoms. The patient never had a major illness or injury in

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her adult life. As a child she had measles and mumps. Despite these indications, her tonsils and eight devitalized teeth had been removed empirically without aiding her.

Physical findings: These include dinner-fork deformities in both hands together with swelling about the knuckles. All the deformed joints that were swollen were crepitant. Diagnosis was [illegible] atrophic arthritis.

Previous treatment: Aspirin, daily for 10 years; vitamin D, three capsules daily for one year; diathermy, weekly for one year; heat and local baths, twice weekly for 10 years; vaccine, every four days for four years; and removal of foci. Under the vaccine therapy, the pain disappeared from the shoulders, hands, wrists, elbows, and feet, but the pain persisted in the knees and back with no change in her gait.

Laboratory findings: Hemoglobin, 92%; erythrocytes, 6,140,000; leukocytes, 11,000; sedimentation rate, 18 mm. per 39 minutes; blood sugar, 117 mgs.; and cholesterol, 294 mgs.

Aciform injections were begun on June 28, 1938, and to the time of this writing, have been given twice weekly for four months. These injections have been directed at the lumbosacral region and knees as indicated in Figs. 2 and 3.

The pain in the back as well as the pain and swelling in the knees has been relieved more in the four months of parenteral acid therapy than during the entire four-year period of previous treatment described.

Case 20. A physician, aged 69, complained of pain in the lumbosacral region after an acute onset in February, 1938. The pain was intense over the lower back and radiated down the course of the right sciatic nerve to the external malleolus, with intense discomfort, anteriorly and posteriorly. By June, 1938, the pain had so increased in severity that the patient was unable to use the right leg. An eight weeks' period of hospitalization ensued. After intensive, daily treatment over this period, he became ambulatory only with the use of a crutch and a cane. The pain remained unabated and the discomfort was evident on both rest and motion. The patient was restless at night because of pain and resorted to the use of mild hypnotics.

Physical examination revealed muscle spasm over the low right back with a compensatory lateral curvature of the spine. Pain was present over the entire lower back and along the course of the sciatic nerves, more particularly on the right. There was considerable limitation of motion over the back.

X-ray study showed extensive bony spurring on the bodies of the vertebrae in addition to considerable ankylosis of the spine. Bony changes characteristic of atrophic arthritis were shown on roentgenograms of the knees, ankles, feet, and sacroiliac joints.

Previous treatment consisted of salicylates, three times daily for six weeks; concentrated vitamins A-B-C, daily for six weeks; diathermy, infrared treatments, daily for eight weeks; physiotherapy (Sitz baths, diathermy, and ultra-violet treatments), daily for eight weeks; removal of foci. This course of treatments was effective only to the extent that the patient became ambulatory with the aid of a crutch and cane. Pain, muscle spasm, and limitation of motion, however, showed only partial improvement.

Aciform II treatments were instituted on October 12, 1938, and were continued over the period of one month with treatments every fourth day. Injections were given along the course of the lower spine and into the gluteal regions as shown in Figs. I-B and 3.

After a month of treatment, the patient discarded both crutch and cane. The spastic muscles were relieved immediately after the second injection. The back is now straight and there is complete freedom of motion in all directions. The patient has been completely relieved of pain over both the back and the right leg and there has been no recurrence over the period of observation. The use of hypnotics for sleep has been discontinued and the patient now notices no fatigue.

The Statistical and Clinical Evidence

THE following compilation and summary represents the results of treatment with this new parenteral acid therapy in our series of 105 cases.

Our experience shows that the parenteral acid therapy used can be safely injected subcutaneously, intramuscularly, and perineurally. Intraneural injections are painful, but these can be avoided inasmuch as perineural injections provide maximum benefits. We have hesitated to inject paravertebrally because of the pain which has been demonstrated in intraneural injections. Epidural injections, in our experience, provide no benefits.

We have confirmed the experiences of others who have investigated this new parenteral acid therapy over a period of years, and we have found no reactions, such as the formation of fibrous tissue or other untoward sequelae.

The patient's willingness to try anything does not release the physician from the necessity of adopting a critical attitude in any therapy and of exercising care to avoid harmful reactions.

Equally important is the physician's obligation to avoid the application of a "favorite" therapy to the exclusion of those in which favorable results have been demonstrated.

It is not uncommon to find well-trained and experienced internists using therapeutic methods and repeatedly ending in failure without investigating the methods used by those who are obtaining results.

Summary

A PARENTERAL acid therapy has been clinically demonstrated by us during the last six months in various forms of arthritis — atrophic, hypertrophic, mixed types, gonorrheal, tuberculous, and rheumatic fever. It has effected favorable responses to treatment and relief of pain in cases representative of these types, as shown in Tables II and III.

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TABLE II

RESULTS OBTAINED IN 100 CASES AT THE HOSPITAL CLINIC AND IN PRIVATE PRACTICE

Number of Patients	Diagnosis	Number of Injections	Amount Per Injection in cc.	Complete Improvement (percent)	Marked Improvement (percent)	Slight Improvement (percent)	Negative (percent)
18	Arthritis	4-30	1-3	33.3	43.5	19.5	6.1
7	Sciatic Neuritis	1-6	1-3	28.5	28.5	28.5	14.3
6	Circumflex Scapular Neuritis	1-5	1-3	16.6	33.0	16.6	16.6
½	Lumbago	1	3-3	100.0			
3	Spinal Fusion (Neuritic Pain)	1-4	2-4	33.3		66.6	
1	Acute Arthritis**	4	3	100.0			
1	Bursitis	4	1		100.0		
1	Pain associated with osteomyelitis	1	3	100.0			
100							

** Pain and tenderness with acute swelling and redness of the left elbow. Pain relieved immediately and patient was able to resume work on masseuse on the third day of treatment.

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TABLE III

THE RELIEF OF PAIN, PRE- AND POST-OPERATIVELY, WITH PARENTERAL ACID THERAPY, PERMITTING THE OMISSION OF OPIATES

No.	Diagnosis	No. of Injections	Amount per Injection	Response
2	Fracture Os Calcis	1-2	1-3	Pain relieved 10 to 12 hours
2	Fracture Tibia	1-2	1-3	Pain and spasm relieved for 10 to 12 hours
1	Hallux Valgus	1	5	Pain relieved for 12 hours

In a total of 105 cases seen over a six months' period, 32.3% showed complete improvement; 42% marked improvement; and 19% slight improvement. In only 6.7% of the cases were the results negative.

This treatment, it is to be emphasized, is in no sense a panacea, nor is it advanced as the ultimate in the treatment of arthritis. However, in our experience in testing 105 cases, it has evidenced a superiority to other forms of therapy in: (1) rapidity of action; (2) absence of reactions; and (3) safety.

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COMMISSION'S EXHIBIT NO. 41-A. 7882

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Date Rec'd 6-6-41 Examiner's Exhibit No. 41-A

FOCAL INFECTION AND ITS RELATION TO ARTHRITIS*

LAURENCE H. MAYERS, M.D., F.A.C.P.
Chicago

Till term arthritis is confusing. But so is rheumatism, the popular name for the same disease. It is exceedingly difficult at times, if not impossible, for medical science to select a nomenclature that can fully explain to the lay mind the nature and ramifications of the disease in question. Nature in medicine should give some information as to the event or sequence of events brought about by an ailment. Unfortunately, many a disease was labeled before its cause had been discovered. Often, after an individual organism had been designated as the origin of the disease, the name chosen to it connected the events produced with the individual organism. But when it was found that a group of organisms could be responsible for the same symptoms and the same events, it was obviously impossible to describe the condition with the accepted name.

Medicine has been in the habit of using the terms arthritis and rheumatism interchangeably for years. The textbook definition is: "A constitutional disease marked by inflammation of the connective tissue of the body." The definition was applied before bacteriology had become an accepted science. Since then, in the desire to be explicit, bacteria having been considered as the causative agents, the name was continued still more by the layman by adding "itis" to the name of each inflamed anatomic structure in order to designate the individual disease. Should the skin become inflamed the condition is called dermatitis; if the muscle is affected, myositis; the nerves, neuritis; the tendon, tenonitis; the cartilage, chondritis; and the joint, arthritis. All these various ailments with their own symptoms and manifestations are collected under the one general term, arthritis, and the public is expected to grasp its meaning.

Arthritis may be caused by many organisms although the most common causative agent of this disease is the streptococcus. But the term streptococcus designates a group of organisms; therefore, when it is named as being responsible for a disease, the statement is not very definite. When the physician is in doubt about the nature of the etiologic factor, he usually resorts to the term infection.

Organisms act in a mysterious, puzzling way. This should be kept in mind in order to understand the difficulty in naming the cause of a sequence of events which may last for months or years. Organisms act the same as certain families of animals do. Different members of the same animal family will exhibit distinctly different habits. Then why should different members of the same family of organisms behave identically? In the rodent family, for example, the squirrel runs up a tree and a rat into a hole in the ground. The strange manifestations of familiar animals are taken for granted, but the erratic behavior of microscopic organisms is subject to theorizing without taking into consideration that their study is far more difficult than that of animals visible to the naked eye. Usually, an obscure name is given and this seems to satisfy the majority of us in the basis endeavor to solve the problem.

Some infectious diseases have their beginning with a focus of infection. A focus of infection is "an area of tissue infected with disease causing organisms." When the words focus and local were first given to the medical profession, they carried with them the idea of a pocket of pus. This pocket was, of course, located within the person and the current belief was that the patient's only chance to be cured of the disease was to have the pocket of pus removed. This has been a common procedure when dealing with arthritis.

Often arthritic patients have been cured by having the pus-producing organisms removed by surgical measures. Unfortunately, only a small percentage of the cases of arthritis are caused by pus-producing organisms. Arthritis is a chronic disorder. Chronic conditions are difficult to treat in an event. But the cure of arthritis is made more difficult by the short-cuts offered patients who are naturally eager to be freed of disease. Most of the so-called cures offered to the arthritic patient are a challenge to his courage. The treatments are mutilating. Many different organs, such as the teeth, tonsils, gallbladder, appendix, uterus, tubes, and ovaries, may be involved; and, therefore, the disease can be attributed to various causes. Many patients have been benefited by the removal of one or more of the organs mentioned. But in many others, the disease remains as persistent as ever after the specialist removes the organ he is particularly qualified to remove.

Usually, the operating specialist plays no part in the later treatment of the disease. He is either inexperienced or not interested in treating the disease itself. When several specialists are employed, each functioning in his limited field, there is apparent an absence of coordinated effort. The wreckage is correspondingly increased; thus, with the presence of many specialists there is an absence of coordination and a great deal of harm is done. The dentists are in a fortunate position; that is, they can repair some of the injury.

There is no denying the fact that people have been restored to health by submitting to operations. The point is that the mechanical procedures and the men trained to do them are far more numerous than the diagnosticians who decide when and where these procedures are indicated. If for each specialist trained to perform these mechanical procedures ten men would be trained to decide when the work is indicated, dentistry and medicine would undoubtedly be applied to better advantage and the amount of harm done would be lessened.

What is being done about this human wreckage? What specialists are being trained to care for it? Who is willing to go through the preparatory course to fit himself for this work? Who will devote himself to the task of teaching these partly incapacitated human beings how to adjust to real

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just themselves so that they may function efficiently?

The three most common chronic disorders attacking mankind today are tuberculosis, syphilis, and arthritis. All three of them were described and classified in our medical literature many years before the organisms causing them were discovered. Because these diseases behave so similarly and show so many similar symptoms, and because any two of the three diseases can and will occur at the same time in the same person, they are often mistaken for each other.

Tuberculosis, like arthritis and syphilis, is a chronic disorder. We have gradually come to understand that about all the general profession can contribute to the diagnosis. The earlier the diagnosis is made, the better the prospects for the patient. But it took many years to find out that the various specialists had little to offer the chronic sufferer. The greatest lesson to learn was not to overtreat the patient. It was discovered that rest in bed was the proper treatment. The patient no longer, as a rule, goes from surgeon to surgeon, trying to have the infection cut out by having the teeth, the gallbladder, or the appendix removed. There are some tuberculous patients with abscessed teeth and diseased gallbladders. But the physician has become conservative. He is inclined to overlook these associated disorders. He tries rather to restore to such a patient a different kind of health with which to combat tuberculosis. Many persons have recovered from tuberculosis despite diseased tonsils and pulpless teeth.

Not many years ago the focus of infection in syphilis was supposed to be the chancre; therefore, it was cauterized and burned out. If the treatment of syphilis were limited to the removal or amputation of the first lesion to appear, this disease would be of little consequence. But it is common knowledge today that by the time the chancre appears, the organism responsible for this disease can be found in the walls of the blood vessels throughout the body.

Let me repeat that in both tuberculosis and syphilis the hardest lesson to learn was not to overtreat the patient. This is also true of arthritis. The medical profession learned, after years of mistakes, that it met with dismal failure when it attempted to cure both syphilis and tuberculosis through the removal of the focus of infection. Again, the same is true of arthritis. There are times when this procedure works like magic. But a few spectacular successes are misleading. When the risks are so great, it is well to *know* when it is safe to operate and when the results will be disastrous. Few patients have been cured of arthritis by the extraction of all their teeth. I have had ample opportunity of meeting many who have made this sacrifice in vain, while some have been materially benefited.

Why then does the arthritic patient still submit to operations? No doubt for the reason that he is still to be found near the springs and mud baths. He is always going somewhere, trying everything, following any kind of advice. What syphilitic or tuberculous patient asks advice of anyone but the physician today? Not long ago such patients went freely about to many climates and springs to have the disease boiled out of them. Again, history repeats itself. Arthritic patients follow the same road today. The Law began to move against tuberculosis and Public Opinion against syphilis. The Law moved because tuberculosis is a communicable disease, and Public Opinion ostracizes the syphilitic person as one to be shunned and scorned. Tuberculosis and syphilis became problems for local jurisdiction. How many years will it be until this is the case with arthritis? Today most physicians who treat tuberculosis or syphilis find it necessary to devote their entire time to these chronic cases. But not so in the case of arthritis. And tuberculosis is not so cruel as arthritis. The tuberculous patient in an extreme stage, even with death close at hand, is quiet and peaceful. He gives little trouble to the one who goes to his aid. Even syphilis is kinder than arthritis. The factor of pain does not disturb the patient so often. At times the disease attacks even the brain and dulls the senses so that the patient does not realize his plight and loses all measure of responsibility.

Cruel as arthritis is, few of its victims lose their senses. Through the developing stages and the tormenting stages, the patient is still able to get around and is strong enough to go from physician to physician—strong enough to travel through his own and other countries in search of help. He never surrenders until poverty has overtaken him and he has no more money with which to fight the enemy. And only then does he become a local problem. It is difficult to advise the patients with this chronic disturbance in the early, acute stages of the disease. The cure does not lie around the corner and this violent manipulation or that particular operation will not restore them to health and usefulness in a few hours or a few days.

The treatment is a long, drawn-out process, requiring much patience, a difficult problem for which the optimistic surgeon is equipped neither by inclination nor training. It is necessary for the physician to observe these patients for years in order to study and understand the course of the disease. He has been baffled and disappointed many times when he expected the same disease to behave in the same way with every patient. But why should he expect constant behavior? The other two diseases mentioned are each caused by a single destructive organism and the variations arise because of the point or points attacked and because of differences in individuals. There are many different kinds of streptococci, and, in the case of arthritis, the clinical variations arise because of the varying characteristics of the organisms.

It is difficult to give a clear-cut picture of the many complicated problems arthritis presents. First of all, there is the close study of the streptococcus, the organism that is the common cause of this disease. Unfortunately, the streptococcus also causes numerous other diseases, such as erysipelas and scarlet fever. The early manifestations of some of these ailments strongly resemble the symptoms of tuberculosis or syphilis.

The many different kinds of streptococci are capable of manifesting themselves in many different ways. They produce various lesions throughout the body. They attack various organs; they behave in about the same way a man behaves in that a man will behave in a different way when he is alone and when he is with his fellows. A man's behavior as a solitary creature is different from his gregarious behavior. And so it is when each type of these various organisms is numerous. The patient is devastated by the multiplicity of streptococci which can and do deform extremities and alter vital organs, and then numerous specialists attempt to restore the arthritic patient to usefulness and health by resorting to manipulations peculiar to the limited field of each. The man is to be envied who can so concentrate his work that the extraction of teeth or the removal of tonsils discharges his duty to the patient. If the dentist or nose and throat specialist had to live with the patient, if he could know and see the injury done to the heart, kidneys, and other organs, his conscience might not allow him to function so many times with so little regard for what might follow his simple operation.

The accompanying illustrations show how rapidly destruction may

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strike after the removal of an infected organ or tooth.

It is known that streptococci originating in a tooth will at times behave in the same manner as the organisms spreading from an infected tonsil. These two types of streptococci can be present at the same time, causing symptoms that at first glance seem trivial or similar and yet each kind requires a specific treatment. That is the great difference between tuberculosis and syphilis on the one hand and arthritis on the other. The name syphilis denotes an individual organism. The name tuberculosis denotes an individual organism. But the name arthritis is descriptive of a numerous clash of organisms. And of this clash each individual organism has its own characteristics. Any one or a group of them may be the active agent or agents of the disease. In order to be able to select the proper reacting organism, for intelligent use in diagnosis and treatment, the physician must have access to a well equipped laboratory where in pure culture he can keep the various organisms liable to cause the disease.

When physicians give the arthritic patient advice what they tell him does not really apply to the individual patient. It applies to many hundreds of these patients. Physicians merely use their experience in medicine. They offer to the individual patient a procedure that has been successfully demonstrated as of beneficial help in a large number of similar cases. This should be true of the advice given by the dentist to his patients. When a dentist disturbs teeth to correct disease he does so, not because he is certain of helping the patient, but because he knows the suggested treatment has helped many others.

When a hundred arthritic patients are treated, an important factor to consider is what percentage can be relieved to usefulness and happiness. Simple manipulation on a particular procedure will help a certain percentage and this percentage must be large enough to justify the procedure about the patient; otherwise, it is little more than guesswork and experimentation.

These statements do not refer to the general practice of the dentist; they do not refer to the 90 per cent who come to his office in the routine of the day. They apply to the 10 per cent of his patients that are sent to him by a physician for his help in the correction of disease. I obtained this information through a questionnaire that was sent to every practicing dentist in Chicago. This 10 per cent is worthy of consideration.

According to the questionnaire there exists a growing tendency among the dentists to consult with a physician in isolated cases. To be exact, four patients out of every thousand are requested by the dentist to go to a physician for diagnosis before he will start any procedure. If this precaution were extended to the entire 10 per cent in question, the coordinated effort of the medical and dental professions should prove of incalculable value to the patient with arthritis or other infectious ailments.

The questionnaire showed that the dentists of Chicago have a greater percentage of natural teeth than the physicians; the laity lags far behind both of them and the arthritic patients are far behind the general public. A few statistics may prove of interest. The information was assorted in accordance with the various decades of life, from the ages of 20 to 30 up to the ages of 70 to 80. During the first period the dentists average 91.27 per cent; the physicians, 89.1 per cent; the laity, 79.1 per cent; and the arthritic patients, 59.3 per cent. During the last period the dentists average 53.46 per cent; the physicians, 51 per cent; the laity, 46 per cent; and the arthritic patients, 8.2 per cent.

These statistics are no doubt indicative of existing conditions all over the country. There are few dentists among my patients in the practice of treating infectious diseases, far less in number than physicians, not to speak of the laity or the arthritic patients. It is obvious that good dentistry is of primary importance in preventive medicine.

Arthritis is one of the most common diseases in which the teeth are suggested as the etiologic factor. In the majority of cases the infected teeth are discovered by the routine examination. If this is the case, what should the procedure be?

According to standard medical text books arthritis can be caused by many kinds of organisms, and this has been proved beyond a doubt by bacteriologic study.

Some arthritic patients have been permanently cured by the removal of abscessed teeth. Others have been temporarily or permanently improved. But some have been temporarily made worse or even permanently crippled by the removal of these teeth.

Should the dentist be confronted with this problem about his own teeth, he would no doubt insist on the following information before he would allow his teeth to be disturbed:

1. How long had the arthritis been present before the abscessed teeth were discovered?

2. Were these abscesses silent ones, discovered by the roentgenogram; or were the teeth disturbing the patient and causing symptoms that brought him to the dentist?

3. What joints were involved, the large joints or the small ones?

4. Was the pain in the joints present only on motion or also when the joints were quiet?

5. Were the small joints swollen and the large joints free from swelling, redness, heat, and tenderness on pressure?

6. What was the condition of the blood?

7. Was the patient anemic?

8. Did he have 100 per cent hemoglobin, 90 per cent, 80 per cent, or 70 per cent?

9. Did he have 5,000,000 red cells, 4,000,000, or 3,000,000?

10. How many leukocytes were present?

11. Did a rise in temperature exist? If so, how long had it been present?

12. Was the urine free from sugar and was the blood sugar normal, especially in patients around the age of 50?

13. What was the blood pressure?

Where infection is present, the few simple, precautionary tests, necessary for the patient's protection as well as the operating dentist's protection, can be obtained in a short time by the average office assistant or nurse. The time required for the tests is as follows: red blood count, eight minutes; white blood count, four minutes; differential count, from twelve to fifteen minutes; hemoglobin determination, two minutes; temperature, two minutes.

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Fig. 1

Fig. 2

Fig. 1—Before removal of tooth.

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Fig. 2—Same patient as in Fig. 1, two days later, permanently blind.

Fig. 3

Fig. 4

Fig. 3—Before removal of tooth.

Fig. 4—Same patient as in Fig. 3, dying of endocarditis which appeared four days after removal of tooth. Petechial hemorrhages, positive blood culture, and rapid clubbing of fingers were present.

Fig. 5

Fig. 6

Fig. 7

Fig. 5—Removal of tooth caused rapid destruction of eye.
Fig. 6—Another patient in whom removal of tooth caused rapid destruction of eye.
Fig. 7—Tooth extraction caused rapid destruction of eye.

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Certain facts about the previous health of the patient should also be obtained:

1. Is this the first time the patient has had this condition? It must be borne in mind that arthritis is one of the most common conditions that has a tendency to recur.

2. If the patient has had previous ill health during his adult life, what were the diseases?

3. Is there a history of an impaired or infected heart, or acutely or chronically involved kidneys?

4. Has the patient had tuberculosis or syphilis, recently or some time ago?

5. Is this the first time the teeth have ever been suggested as the cause of ill health? If they have previously been disturbed and previous abscesses were removed, what effect did this procedure have on the disease at the time? Was the disease made worse or temporarily improved?

6. If the condition has recurred, what interval followed the preceding attack, months or years?

7. Has the patient ever had diabetes?

8. What is the age of the patient?

9. Is he at a time of life when one can reasonably assume that other organs of his body are going through the same changes as the teeth?

These questions should give a fair history of the patient. A few hours spent with the patient in order to get better acquainted with him and the condition of his health may save him years of suffering.

Should the dental surgeon not be equipped to spend the time necessary in the laboratory work, he certainly would be justified in requesting the physician who referred the patient to him to furnish him with this information before he assumes any responsibility in entering into a procedure without having the protection to which he is entitled. When he enters the field of medicine and does a definitive procedure which may be the beginning of chronic metabolism he should be acquainted with the possible hazards. This is one of the reasons why the dental and medical professions cannot be separated. The tragic result of the division of their responsibilities can be observed in hundreds of cases. The dentist and the physician should cooperate at all times.

It has taken years to give both the patient and the surgeon these protections when tonsils were removed. The same kind of harm and the same difficulties that are liable to follow the extraction of teeth may follow a tonsillectomy. In class A hospitals, physicians are prohibited from performing tonsillectomies until after a physical examination has been made and the temperature, the blood count, and the clotting time of the blood have been recorded.

When technical procedures are instituted to relieve the patient, the utmost protection should be accorded both patient and operating surgeon. No one performs more careful, meticulous work before entering into a procedure than the physician about to do a blood transfusion. Why? A blood transfusion does not require as much skill and training as the extraction of a tooth. But in one procedure the reaction is prompt, immediate, while the effect of the other is a matter of conjecture. There is no escape from criticism for the operator who does the transfusion. In most instances, when the dentist extracts teeth he is saved from immediate embarrassment. The fuse he has lighted is a long one and the explosion may not take place for a week, a month, or even several months. It is because of this delayed reaction that it is possible for him to proceed with this simple operation without the necessary preparations to safeguard the patient and himself from the events that may follow. Logically, the operating dentist should be just as careful as the physician performing a blood transfusion. It is a mistake of his to disturb teeth solely at the suggestion of a physician without insisting on the necessary data to protect himself.

The opinions of authorities regarding the benefits following the removal of infected teeth, devitalized teeth, and the so-called dead teeth are conflicting. Standard textbooks used in the medical schools bring such statements: "The removal of infected, devitalized and dead teeth is still a mooted question." and "Remove all infected, devitalized and dead teeth." It is such a mooted question when no concerted opinion can be found.

Because of the extensive literature of both the medical and dental professions, dentists are, in most cases, not familiar with the matters; therefore, they often find themselves in a quandary as to how to proceed, not having ready references at hand to support their judgment and accept the word of an *individual* physician as authoritative and act on his opinion.

While the organisms responsible for the different diseases may or may not be known today, their portal of entry is as mysterious as ever. The mere mention of teeth as one of many possible sources of disease has been pounced upon and interpreted by a certain type of specialist, who, using this authority in his own way, advises as a cure the removal of teeth when treating infectious diseases; while the textbook, no doubt, means to convey to the student the fact that this procedure will provide the patient with better health, and consequently greater resistance to combat the disease. It is the responsibility and opportunity of the dental profession to extend this kind of health service to arthritic patients and to the public generally.

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26 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

ORDER DENYING RESPONDENTS' MOTION FOR A HEARING.

(Received Oct. 25, 1951. Secretary, Federal Trade Commission.)

At the hearing held in the above-entitled proceeding in Buffalo, New York, on October 17, 1951, counsel for the respondents moved for a further hearing to be held in Chicago, Illinois, for the purpose of permitting him to present expert opinion testimony in surrebuttal, and the trial examiner having considered said motion and being of the opinion that the proposed testimony in surrebuttal would be merely cumulative in effect,

It Is Ordered that the motion of counsel for the respondents for the holding of a further hearing for the purpose of presenting expert opinion testimony in surrebuttal be, and hereby is, denied.

Abner E. Lipscomb,
Trial Examiner.

October 24, 1951.

27 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

ORDER TERMINATING THE RECEPTION OF EVIDENCE AND INVITING COUNSEL TO SUBMIT PROPOSED FINDINGS.

(Received Oct. 25, 1951. Secretary, Federal Trade Commission.)

It Is Ordered that the reception of evidence in the above-entitled proceeding be, and hereby is, terminated as of this date.

It Is Further Ordered that December 3, 1951, be, and hereby is, designated as the date on or before which counsel may, at their election, submit proposed findings, conclusions and order.

Abner E. Lipscomb,
Trial Examiner.

October 24, 1951.

* * * * *

32 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

PROPOSED FINDINGS, CONCLUSIONS AND ORDER SUBMITTED BY COUNSEL SUPPORTING THE COMPLAINT.

(Received Nov. 30, 1951. Secretary, Federal Trade Commission.)

To Hearing Examiner Abner E. Lipscomb:

Pursuant to Rule XXI of the Rules of Practice of the Federal Trade Commission, Joseph Callaway, attorney supporting the complaint in the above-entitled proceeding, submits to the Hearing Examiner his proposed findings, conclusions and order therein, together with the reasons therefor as hereinafter set forth:

First Proposed Finding:

Respondent Rhodes Pharmacal Company, Inc., is a corporation organized under the laws of the State of Ohio, and having its office and principal place of business at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose are respectively the President and the Vice-President and Treasurer of Rhodes Pharmacal Company, Inc., and have offices and places of business at 1814 East 40th Street, Cleveland, Ohio. The said individual respondents are now and at all times mentioned herein have been in control of the management, policies and operation of Rhodes Pharmacal Company, Inc., particularly in respect to the acts, practices, and methods herein alleged.

Reasons for Proposed Finding:

Paragraph One of the complaint is admitted in answer.

Second Proposed Finding:

Respondents are now, and have been for more than two years last past, engaged in the business of manufacturing, selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

33 The designation used by respondents for the said product, and the formula and directions for use thereof are as follows:

Designation: Imdrin.

Formula: Each tablet contains—

Acetylsalicylic acid	1.9 grains
Manganese salicylate	1.5 grains
Calcium succinate (anhydrous)	2.3 grains
Caffeine	.16 grains
Thiamine chloride	1 mg.

Directions: Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Reasons for Proposed Finding:

Paragraph Two of the complaint is admitted in answer.

Third Proposed Finding:

In the course and conduct of their business, the respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning Imdrin by the United States Mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce its purchase.

Among their advertisements are the following:

Radio continuities which were placed subsequent to September 1, 1948, for respondents by their advertising agency with, and broadcast by various radio broadcasting stations, including, but not limited to, the following stations:

34 WJJD—Chicago, Illinois
WHN—New York, New York
WPIX—New York, New York
WOV—New York, New York
KWTO—Springfield, Missouri
KWKH—Shreveport, Louisiana
WWVA—Wheeling, West Virginia

Advertisements which were prepared subsequent to September 1, 1948, for respondents by their advertising agency, and published or caused to be published by said respondents in various newspapers, including, but not limited to the following newspapers and issues thereof:

Washington (D. C.) "Times-Herald"—Issues of March 11, 24 and April 18, 1949.
Washington (D. C.) "Daily News"—Issue of March 15, 1949.
Washington (D. C.) "Post".
Baltimore (Md.) "Sun".
Philadelphia (Pa.) "Bulletin".
Philadelphia (Pa.) "Inquirer".
Birmingham (Ala.) "News Age Herald".
Cleveland (Ohio) "Plain Dealer"—Issues of January 9, 16, 23, 30, February 6, 13, 1949.
Syracuse (N. Y.) "Herald Journal"—Issue of February 17, 1949.
Rochester (N. Y.) "Times"—Issue of January 27, 1949.
Bluefield (W. Va.) "Daily Telegraph"—Issue of April 1, 1949.
Seattle (Wash.) "Daily Times"—Issue of March 11, 1949.
Atlanta (Ga.) "Constitution"—Issue of March 10, 1949.
Washington (D. C.) "Star"—Issues of April 26, 19, 1949.
Indianapolis (Ind.) "News"—Issue of February 15, 1949.
Baltimore (Md.) "American"—Issue of May 7, 1949.

New Orleans (La.) "States"—Issues of November 18, 1948, and April 27, 1949.
South Bend (Ind.) "Tribune"—Issues of February 13, 1949 and March 27, 1949.
Shreveport (La.) "Times"—Issue of March 13, 1949.
Baltimore (Md.) "News-Post"—Issue of January 14, 1949.
Syracuse (N. Y.) "Herald Examiner"—Issue of January 16, 1949.
St. Louis (Mo.) "Globe Democrat"—Issue February 13, 1949.
Clarksburg (W. Va.) "Exponent-Telegram"—Issue of March 13, 1949.
Boston (Mass.) "Daily Record"—Issue of March 15, 1949.
Rochester (N. Y.) "Sun"—Issue of April 14, 1949.
St. Paul (Minn.) "Pioneer Press"—Issue of January 23, 1949.
35 New York (N. Y.) "Sunday News"—Issues of January 16 and 30, 1949, February 27, 1949 and May 15, 1949.
Cedar Rapids (Ia.) "Gazette"—Issue of March 13, 1949.
Springfield (Ill.) "Illinois State Journal"—Issue of January 21, 1949.
Louisville (Ky.) "Times"—Issue of February 11, 1949.
Chicago (Ill.) "Tribune"—Issues of January 1, 19, 21, 26, 28, 31; February 4, 7, 9, 12, 13, 21; March 6, 13, 27, 30, and April 19, 1949.

Counter cards and folders.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce, directly or indirectly, the purchase of Imdrin in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Reasons for Proposed Finding:

Paragraph Three of the complaint is admitted in answer.

Fourth Proposed Finding:

Through the advertisements in evidence, respondents have represented directly and by implication that Imdrin is an adequate, effective and reliable treatment for, will

arrest the progress of, will correct the underlying causes of, and will cure all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis.

Reasons for Proposed Finding:

Respondents' advertising sets forth certain symptoms as indicating the presence of some form of arthritis. The advertising then says that Imdrin will relieve those symptoms. For instance in Comm. Exs. 12, 15, 16, 17, 18, 19 and 20, it is stated that Imdrin is for victims of arthritis, neuritis, sciatica, and neuralgia (underscoring supplied). In the same advertisement, in the right-hand column under the heading, "Where Rheumatism Strikes and How to Detect It", the statement is made "All forms (of rheumatism and arthritis) cause pain, frequent swelling, and possible loss of function of joints".

This is only another way of saying that rheumatism in all its forms may be detected by pain, swelling, and stiffness, or loss of function of joints. Then when Comm. Exs. 2, 3, 4, 5, and 6, say that Imdrin "stops the pain", "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night", "prolonged freedom from pain", "for them the aching joints and muscles are a thing of the past", this is only another way of saying that Imdrin will do away with the symptoms which are present in all forms of arthritis and rheumatism and hence cures it.

Comm. Ex. 13 is addressed in the left-hand column to sufferers from rheumatism, arthritis, neuritis, sciatica, gout, and neuralgia. Sufferers from bursitis and fibrositis are included among those addressed in Comm. Ex. 37.

Other representations implying a cure are innumerable. Comm. Exs. 12 through 20 and others all bear the heading "Amazing New Discovery for Rheumatism, Arthritis". "For", as thus used means a "cure, mitigation, treatment or prevention of". *Positive Products Co.* v. *F. T. C.*, 132 F. (2d) 165. Those who have suffered from any form of arthritis for 20 years are promised a "happy comfortable life", and a "more normal active life" (Comm. Exs. 19, 20). The least they could infer from these promises is that the progress of the disease from which they were suffering would be arrested.

Another implication of Imdrin arresting the progress of

the disease is contained in the following statement, taken from Comm. Ex. 37 under the heading "No More Blue Days":

"In addition, the mental depression that sometimes resulted from therapy in these ailments was not found to be of major significance, when Imdrin was used as indicated. 'Blue days' disappeared and patients resumed their usual cheerful outlook on life. This is of utmost importance, since there seems to be a definite relationship between the onset of arthritis and mental condition." (Underscoring supplied.)

In an advertisement addressed to sufferers from arthritic condition, the following, also taken from Comm. Ex. 37, could only mean that the underlying cause of their condition is an inadequate functioning of the vital enzyme systems of the blood and bones, and that a restoration of such functioning, and therefore a removal of such underlying cause, is promised by the use of Imdrin:

37 "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate, have been combined with other ingredients for maximum effect."

Other indirect promises of a cure are contained in the two horizontal rows of pictures used in Comm. Ex. 20 and in other exhibits. Although the subheading above the first row of pictures, referred to, only talks about relief of pain and suffering, these pictures of invalids in the first row, followed by the picture of the woman bowling and the man playing golf, are a clear implication that by taking Imdrin, the invalids pictured in the first row were enabled to bowl and play golf. Nor is the implication in any manner offset by the words "Posed for by Professional Models" in small type, following the asterisk, further down in the advertisement.

Moreover, the general tenor of the newspaper advertisements, the use of such words as "amazing new discovery", comparison with "wonder-working drugs, Sulfa and Penicillin", statements that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling in the joints" and that by using Imdrin, sufferers from arthritic conditions can "live happy, comfortable lives again"

even though they may have "suffered, waited and hoped for 20 years",—the tenor of these advertisements is calculated to deceive even those who have had arthritic disorders for a long time, even those who have made the rounds of various doctors' offices, without being cured, those whose "cases (are) deemed almost hopeless".

Since these advertisements represent that Imdrin will arrest the progress of, remove the underlying cause of, and cure the various kinds of arthritis and rheumatism, the preparation is also certainly represented as an adequate, effective, and reliable treatment for such conditions. It might be possible under some court decisions to represent a preparation as an adequate, effective, and reliable treatment, without representing it as a cure, but there are no court decisions to the effect that a cure is not an adequate treatment. Such would be an absurdity.

For the Trial Examiner to be sure that all the conditions enumerated in the fifth proposed finding are included in the advertisements, Comm. Ex 1 is addressed to sufferers from arthritis, rheumatism, sciatica, and neuritis. Victims of neuritis, sciatica and neuralgia are particularly appealed to in Comm. Ex. 12. Victims of gout are among those particularly addressed in Comm. Ex. 13. Victims
38 of bursitis and fibrositis are also appealed to in Comm. Ex. 37. Of course, all of the advertisements are addressed in general to sufferers from arthritis and rheumatism, without distinction as to kind, and without regard to cause.

What has been said up to date in support of proposed finding number five is based entirely on a review of the advertisements per se. It is a well-recognized principal of Federal Trade Commission law that the Commission has the right to pass upon the meaning of advertisements by looking at the advertisements themselves (*Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. (2d) 29; *Charles of the Ritz* v. *Federal Trade Commission*, 143 F. (2d) 676).

There is, however, in the record the testimony of Dr. Rosenberg, and the testimony of Mr. Breiman, both intended as aids to the Trial Examiner and the Commission in ascertaining the meaning of the advertisements. There is also the testimony on cross-examination of two of respondents' user witnesses.

Dr. Rosenberg's testimony:

The qualifying of Dr. Rosenberg to interpret the meaning of the various advertisements as they would be understood by sufferers from arthritic and rheumatic disorders followed exactly the course approved in *Stanley Laboratories* v. *Federal Trade Commission*, 138 F. (2d) 388. See record, pp. 258-263. His direct testimony is in full support of the fifth proposed finding (R. pp. 283-312).

Respondents seemed to make much of the fact that in their preliminary cross-examination of Dr. Rosenberg, the following question was asked and answered as follows:

"Q. As I understand it, Doctor, the discussions essentially went to the therapeutic value of the drug is that right?

"A. Well, the possible therapeutic value is the most common subject discussed during such conversations." (R. p. 278.)

Respondents overlook the fact that Dr. Rosenberg had just previously stated that he and many patients commonly discussed the advertisements (R. p. 278). He had also previously stated that many patients had come to him with an advertisement, "We will say an advertisement of Imdrin and said, 'Here is a drug advertised as a treatment for my arthritis' " (R. p. 277). This would of
39 itself be an interpretation of advertising by the patient, even though the most common subject discussed was the therapeutic value of the drug.

Respondents also overlook the fact that Dr. Rosenberg also testified that "My patients frequently bring the advertisements to my office and read them to me and point out certain phrases in them and ask my opinion of them, discussing the subject of such remedies in general" (R. p. 260).

So respondents' counsel was wrong when he stated on the record on page 283 that "We here now demonstrate that there were actually no discussions going to the meaning of advertising of drug products and the consumer reaction thereto."

To ask Dr. Rosenberg to give the dates or circumstances of any discussion about advertisements of drugs that occurred next prior to his conversations with Commission Trial Counsel, which itself occurred several months prior to the time of this testimony,—this was manifestly unfair,

and his inability to do so does not detract from the value of his testimony.

Mr. Breiman's testimony:

The testimony of this witness may be considered in three different ways (1) as self serving declarations of the respondent in whose employ he was, (2) as of no value, because his inquiries were not directed to the particular purchasing public to whom the advertisements were addressed (R. pp. 740-742), and (3) as fully supporting the fifth proposed finding.

Under (1), Mr. Breiman's testimony was admittedly obtained for the purpose of this proceeding by a person in the employ of respondents. In that situation it allowed respondents to place their own interpretation on what was said by the persons interviewed, without those persons being offered for cross-examination, or the actual statements made by the persons interviewed put in evidence. The interviewer who stood in the shoes of the respondent gave us only the checkmark which he made by the name and address of the person interviewed. This is a far cry from introducing in evidence questionnaire sheets filled out by the various members of the public to whom they were sent. Suppose some of the persons interviewed by Mr. Breiman thought the advertisements exhibited to them meant both "pain relief" and "treatment and cure", as well they might. Suppose some of them were doubtful or hesitant about deciding between the two alternatives. There is no way for these situations to be shown. We only have a check mark which had to be put in one column or the other. Therefore, this gave respondents the right to interpret out of the presence of counsel supporting the complaint what was meant by the various answers obtained.

The statement of a party interested in the results of a lawsuit cannot be regarded as undisputed, if any reasonable inference can be drawn from facts or circumstances unfavorable to his conclusion. (*Harris* v. *Bush*, 196 S. W. 471, (Arkansas 1917).)

Under (2), the statement of the Court on this same point when it arose in another case may be of value. In considering the advertisement of the Ford Motor Company's 6% plan for purchasing a Ford car on credit, the court said that the advertisement must be considered from the view of prospective purchasers of Ford cars. (*Ford Motor*

Company v. *Federal Trade Commission*, 120 F. (2d) 175.) Even without this decision, it is elementary that respondents' advertising must be considered from the view of prospective purchasers of Imdrin, that is, those suffering from some form of arthritis.

Under (3) above, if the reaction to the advertisements by prospective purchasers, that is, those suffering from some form of arthritis, were shown to be similar to those persons interviewed by Mr. Breiman, (which has not been shown) the result is that on the basis of 7,000,000 sufferers from arthritis in this country (R. pp. 234, 235) between 8.7 per cent and 9.3 per cent would believe respondents' advertising represented a cure (R. pp. 731, 732). The half way point between these two figures is 9 per cent. This percent of 7,000,000 is 630,000 sufferers from various forms of arthritis who would think respondents' advertising meant a cure for them. This supports the allegations of the complaint. This is quite a sizeable group, a substantial portion of the purchasing public as alleged in paragraph Five of the complaint, who are deceived by respondents' advertising. They deserve protection at the hands of the Federal Trade Commission.

The Two User Witnesses:

The testimony of Mr. King Hayes and Mr. E. H. Carr on cross-examination bears out Dr. Rosenberg's interpretation of the advertising. These were two of respondents' user witnesses whose testimony is shown in the record at pages 844-845, and pages 902-906, respectively. It must be borne in mind that respondents' advertising directed to arthritic sufferers states that "all forms (of rheuma-
41 tism and arthritis) cause pain, frequent swelling and possible loss of function of joints". (Comm. Exs. 12, 15, 16, 17, 18, 19 and 20.) Other advertisements state Imdrin "stops the pain", "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night". Dr. Weisberg, respondents' expert, said Mr. King Hays had gout which is a form of arthritis (R. p. 833) and that Mr. Carr had hypertrophic arthritis or subdeltoid bursitis, both of which are forms of arthritis (R. p. 948). Mr. Hays said he had pain, stiffness, and swelling; that if he could find something to take away the pain, stiffness, and swelling, he would think he was cured (R. p. 855). Mr. Carr said the same thing (R. p. 906).

In other words, through the mouths of these witnesses of respondents is confirmation of the fact that representations addressed to rheumatic sufferers that Imdrin "stops the pain", "causes stiffness and swelling to disappear", is a representation of a cure. They had arthritis. They had pain, stiffness, and swelling. They were seeking just what respondents' advertisements promised, and thought if they could get what respondents' advertisements promised, they would be cured.

Fifth Proposed Finding:

There is no such disease simply known as arthritis, or any disease known as rheumatism. These are general terms, sometimes used interchangeably, and refer to many diseases, some of which the cause is known, and some of what the cause is unknown. Chronic forms of rheumatism or arthritis of unknown causes are rheumatoid arthritis, osteoarthritis and rheumatic fever. Then there are some forms of arthritis for which the causes are known. They are called specific infectious arthritis. Among these forms of arthritis are the arthritis of syphilis, the arthritis of gonorrhea, the arthritis associated with pneumonia and tubercular infection. There are forms of arthritis, such as gout, which are connected with disturbances of metabolism. Sometimes arthritis or rheumatism may be the result of a tumor, or malignant growth such as cancer. (Dr. Rosenberg, R. pp. 238-239; Dr. Barton, R. pp. 386-388, 400.) The terms "arthritis" and rheumatism" also include the conditions known as fibrositis, bursitis, neuralgia, neuritis, and sciatica, which are themselves conditions rather than specific diseases, each of which may result from any one of a number of causes. (Dr. Rosenberg, R. pp. 388-390; Dr. Wolpaw, R. p. 479.)

42 All of the various kinds of rheumatism and arthritis are characterized by different pathological changes, that is, changes in a person's body, or organs and tissues. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 390; Dr. Wolpaw, R. pp. 479-480.) Among the pathological changes caused by rheumatoid arthritis, are destructive changes in the joints themselves and widespread inflammatory changes in the tissues of the body, including the synovial membrane and connective tissues. The swelling in the joints in rheumatoid arthritis is due to this inflammatory thickening of the synovial membrane and connection tissue. The

synovial membrane is the membrane that lines a joint space. (Dr. Weisburg, R. p. 618, 626, 627; Dr. Arnold Black, R. p. 658, both on cross-examination.)

There is no drug, or combination of drugs, that can restore to normal the pathological changes that occur in rheumatoid arthritis (Dr. Rosenberg, R. pp. 329, 330; Dr. Barton, R. pp. 425, 426; Dr. Wolpaw, R. pp. 512, 513), or in osteoarthritis (Dr. Rosenberg, R. p. 327; Dr. Barton, R. p. 424; Dr. Wolpaw, R. p. 511), or in sciatica (Dr. Rosenberg, R. p. 314; Dr. Barton, R. p. 403; Dr. Wolpaw, R. p. 495), or in any kind of neuritis, except that caused by vitamin deficiency, for which respondents' preparation is admittedly not a remedy (Dr. Graef, R. pp. 206, 208; Dr. Rosenberg, R. p. 319; Dr. Wolpaw, R. p. 499), or in gout (Dr. Rosenberg, R. p. 325; Dr. Barton, R. p. 419; Dr. Wolpaw, R. p. 508), or in bursitis (Dr. Wolpaw, R. p. 505), or in infectious arthritis (Dr. Rosenberg, R. p. 332; Dr. Wolpaw, R. p. 515).

The various kinds of arthritis and rheumatism are characterized by different progress and development. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 390; Dr. Wolpaw, R. p. 480.) In many instances, the manifestations and symptoms are different. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 392; Dr. Wolpaw, R. p. 280.) The various kinds of arthritis and rheumatism require different treatment, which has to be greatly individualized for each patient, even among those suffering from the same kind. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 392; Dr. Wolpaw, R. p. 481.) Adequate, effective, or reliable treatment for any kind of arthritis or rheumatism depends on an adequate diagnosis, first as to whether the person has arthritis or rheumatism and, if so, the particular kind. (Dr. Rosenberg, R. p. 257; Dr. Barton, R. p. 394; Dr. Wolpaw, R. pp. 484, 485.) The prerequisites of an adequate diagnosis are first, a history of the patient including sex, occupation, family history, injuries and systemic diseases had in the past, if any, a detailed consideration of the course of the illness of which the patient is complaining,

the character of its onset, the speed and character of
43 its progress, and the response to previous treatment.

Second, a detailed physical examination of every part of the patient's anatomy. Third, laboratory tests of the blood, urine and other secretions, X-ray and sometimes an examination of the fluids in various joints. (Dr. Rosen-

berg, R. pp. 252-256; Dr. Barton, R. pp. 394-399; Dr. Wolpaw, R. pp. 484-489.) All of these matters would enter into the diagnosis. (Dr. Wolpaw, R. p. 489.)

There is no drug or combination of drugs that constitutes an adequate, effective or reliable treatment for the various kinds of arthritis and rheumatism. (Dr. Rosenberg, R. p. 250; Dr. Barton, R. p. 393; Dr. Wolpaw, R. p. 484; Dr. Black, R. pp. 647, 648.)

In arthritis conditions, where the cases are not in the advanced stage, there may occur periods of remission that may last for months. (Dr. Miller, R. pp. 1053, 1054.)

The consequences of delay in adequate treatment of arthritis and rheumatism, particularly the arthritis of specific known infections, may result in irreparable crippling. (Dr. Rosenberg, R. p. 257; Dr. Barton, R. p. 400; Dr. Wolpaw, R. p. 490.)

Reasons for Proposed Finding:

Specific citations to the record support every one of the above statements and there is no testimony to the contrary.

Sixth Proposed Finding:

Respondents' preparation, "Imdrin", is not an adequate, effective, or reliable treatement for, will not arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis.

Reasons for Proposed Finding:

In addition to the previous proposed finding, which is undisputed, this proposed finding is supported overwhelmingly by the direct testimony of Dr. Rosenberg, which on these points is summed up on pages 334-336 of the record; by the direct testimony of Dr. Barton, which on these points is summed up on pages 430-433 of the record; by the direct testimony of Dr. Wolpaw, which on these points is summed up on pages 518-520 of the record; by the direct testimony of Dr. Graef, which on these
44 points is summed up on pages 204-208 of the record.

All of these men were the best possible qualified experts in this particular field. Dr. Wolpaw had actually had experience in treating patients with Imdrin, who were suffering from arthritis conditions. The fact that Dr. Barton, Dr. Rosenberg and Dr. Graef had had no ex-

perience with Imdrin, itself, does not nullify the weight attached to their testimony, as qualified physicians based on their general knowledge of medicine. (*Irwin et al.* v. *F.T.C.*, 142 F. (2nd) 316; *John J. Fulton* v. *F.T.C.*, 130 F. (2nd) 85; *Justin Haynes & Co.* v. *F.T.C.*, 105 F. (2nd) 988; *Bristol Meyer* v. *F.T.C.*, 185 F. (2nd) 58.) Especially is this true in this particular case for the following reasons:

Dr. Shorr showed conclusively in his testimony that succinates are normally present in the body; that when added in amounts over and above the amount normally present in the body, the effects would be deleterious (R. p. 87); that there were no clinical conditions under which there were ever a lack of succinates in the body (R. p. 104); that his experiments were with sodium succinate, but the important thing was the succinic acid in the succinate, whether it be sodium succinate, calcium succinate, or ammonium succinate (R. pp. 109, 111); that succinates taken by mouth never get into the blood that circulates through the body (R. p. 118); that taken by mouth, succinates are converted completely to sugar by the liver (R. p. 114); that he has calculated the effect of the amount of succinate in the daily dosage of Imdrin, and it would result in .56 grams of sugar being added to the body when it passed through the liver (R. pp. 115, 116). There has never been any contention that the thiamine chloride or caffeine added anything of value to the preparation. So when Dr. Shorr's testimony eliminated any possibility of benefit from the calcium succinate in the preparation, all that is left so far as therapeutic effect, are the salicylates, manganese salicylate and aspirin. In fact respondents' expert, Dr. Weisburg, stated that unequivocably at the bottom of the 3rd page of his affidavit which is Commission Exhibit 39. All of respondents' experts in an attempt to show the value of Imdrin in rheumatic conditions, only talked about the value of the salicylates in the prep-
45 aration. The record shows that Dr. Barton and Dr. Rosenberg each have had wide experience in the use and the effect of salicylates in rheumatic conditions. (Dr. Rosenberg, R. pp. 341-344; Dr. Barton, R. pp. 452, 453.) Since the undisputed evidence shows that the salicylates are the only active ingredients it follows that Dr. Barton and Dr. Rosenberg were as well qualified to talk about the effects of Imdrin in rheumatic conditions as if they had extensive experience with Imdrin itself.

The testimony of the Commission experts in support of proposed finding No. 6 is not seriously disputed by the heterogenous collection of doctors, put on the stand by respondents. None of the doctors called by respondents had used Imdrin, nor do their qualifications or experience in the field of arthritis diseases begin to compare with the qualifications and experience of the experts who testified in support of the complaint.

Dr. Arnold Black, one of respondents' expert witnesses, stated on cross-examination that adequate treatment of an arthritic condition included extensive general management, not only medication, but also rest, diet, physiotherapy and orthopedic measures, where indicated; that it would take all of these measures to constitute adequate treatment (R. p. 648). He further stated that just merely dispensing salicylates could not be considered an adequate treatment for rheumatoid arthritis (R. p. 649).

Seventh Proposed Finding:

Through the use of the advertisements in evidence, respondents have represented directly and by implication, that their preparation Imdrin is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis, and will afford complete, permanent relief from the aches, pains and discomforts thereof.

Reasons for Proposed Finding:

First let's consider again what respondents' represented to be the symptoms and manifestations of the various kinds of rheumatism and arthritis.

46 "Where Rheumatism Strikes And How To Detect It.

"Rheumatic and arthritic pain and inflammation strike any of the areas indicated on the above chart (see Arrows). But these diseases have many forms and symptoms. All forms cause pain, frequent swelling and possible loss of function of joints * * *." (Comm. Ex. 12, 15, 16, 17, 18, 19, and 20.)

Comm. Ex. 2, one of the radio advertisements, starts off:

"If the misery of rheumatic and arthritic pains have been driving you to distraction—if you are plagued day after day with tormenting aches, swelling and stiffness * * *." (Underscoring supplied.)

Comm. Ex. 4, another radio advertisement, carries out the same theme. We therefore have respondents' representing that pain, stiffness and swelling of the joints are the common symptoms of all forms of arthritis and rheumatism. We then have these same radio advertisements telling the sufferer that Imdrin "stops the pain", "stiffness and swelling disappear, often over night". (Comm. Ex. 2, 3 and 4.) The newspaper advertisements say that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling." (Comm. Ex. 12, 13, 14, 15, 16, 17, 19 and 20.) Comm. Ex. 37 says "Imdrin" is a product scientifically designed to aid in the relief of nagging aches, pains, stiffness, and swelling of arthritis and related illnesses * * *. It will be found that Imdrin gives prompt, efficacious and long-lasting relief from the symptoms of the arthritic state, when used as recommended."

Thus we have Comm. Ex. 37 saying in so many words that Imdrin is an adequate, reliable and effective treatment for the symptoms of arthritis. We also have the other advertisements saying that the common symptoms of all forms of rheumatism and arthritis are pain, stiffness and swelling and that Imdrin is an effective treatment for these symptoms.

47 Respondents have also, through the advertising in evidence, represented that Imdrin will afford complete and permanent relief from the aches, pains and discomforts of all forms of arthritis and rheumatism. In the phrase "stops the pain", "stop" means "to interrupt or prevent the continuance or occurrence of"; to "cause to cease" according to Webster's New International Dictionary, 2nd Edition,—not to reduce the pain or to lessen it, but to take it away altogether. If "stiffness, and swelling disappear", as the advertisement says, they are gone, not merely reduced or lessened.

If, for arthritis sufferers, the "aching joints and muscles are a thing of the past", as the advertisements say, they are permanently gone.

"Remember it is much better to continue taking Imdrin some time after all symptoms have disappeared. This will aid in preventing the recurrence of pains and stiffness." (Comm. Ex. 37 Underscoring supplied.)

If all symptoms have disappeared, that is complete relief and if the recurrence of pains and stiffness are prevented, that is permanent relief.

Eighth Proposed Finding:

Imdrin, however taken is not an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis or rheumatism, including rheumatoid arthritis, osteo-arthritis, specific infectious arthritis, fibrositis, neuritis, sciatica, gout, neuralgia and bursitis. It will not afford any relief of pain or other symptoms in the more severe cases. In other cases the relief afforded will be limited to such degree of temporary and partial relief of pain and fever (if fever is present) as its salicylate content may afford in the individual case. Therefore Imdrin cannot be depended upon to completely or permanently relieve the pains or to have any effect on any other symptoms, except fever, which accompany arthritic or rheumatic conditions including rheumatoid arthritis, osteo-arthritis, specific infectious arthritis, fibrositis, neuritis, gout, sciatica, neuralgia or bursitis.

48 Reasons for Proposed Finding:

An analysis of all the evidence both pro and con on the 8th proposed finding seems proper. This consists of the testimony of Doctors Rosenberg, Graef, Barton, Wolpaw, Weisberg, Black, Mayer, Arkim, Robinson and Lockie, (which will be discussed in the order in which it was given) plus the testimony of 14 user witnesses.

Dr. Rosenberg:

Dr. Rosenberg stated unequivocally that Imdrin was not in his opinion, either taken as directed or in double the dosage, an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism including gout, fibrositis, neuralgia, bursitis or sciatica (R. pp. 336, 337). He had discussed in detail the symptoms of sciatica and stated that the most common symptom was pain along the course of the sciatic nerve; pain in the back of the leg and various portions of the lower extremities (R. p. 315) and that at most Imdrin might afford temporary relief from some mild pain in the area of the sciatic nerve, whether taken as directed or in double the dosage; that it could not be relied upon to usually or ordinarily relieve the pains of sciatica completely (R. p. 316). Dr. Rosenberg stated that the predominant symptom of neuritis was pain in the region of the affected nerve, but other symptoms included numbness, weakness

of muscle groups which supplied those nerves, and sometimes even paralysis; that Imdrin taken as directed would have little effect upon the pain of neuritis, and that doubling the dosage would not increase the ability of the preparation to relieve the symptoms of neuritis (R. pp. 319, 320). Dr. Rosenberg stated that the predominant symptom of nearalgia was lightning bursts of pain; that when taken as directed or in double the dosage, Imdrin would have little if any effect upon the pain of neuralgia; that in any event it could not be depended upon to usually or ordinarily relieve the pain of neuralgia completely (R. pp. 320, 321). Dr. Rosenberg testified that the symptoms of fibrositis were aching and stiffness about joints in the various muscle groups; that the predominant symp-
49 tom was pain; that Imdrin taken as directed or in double the dosage would only give slight temporary relief to the minor pains of fibrositis (R. p. 322).

Dr. Rosenberg testified that the usual symptoms of bursitis were pain and swelling at the affected site; that Imdrin taken as directed or in double the dosage would have little if any effect on the pain of bursitis (R. pp. 322, 323). He further testified that in the early phases of gout, the symptoms were recurring attacks of pain and swelling in the joints; that Imdrin taken as directed or in double the dosage would have little or no effect on the pains of gout (R. pp. 325-326). Dr. Rosenberg testified that the usual symptoms of osteo-arthritis were pain and stiffness that is aggravated by use; that Imdrin taken as directed or in double the dosage would only give partial temporary relief from the pains of osteo-arthritis at the most; that Imdrin could not be depended upon to usually or ordinarily relieve the pains of osteo-arthritis completely. (R. pp. 327, 328.) Dr. Rosenberg testified that some of the symptoms of rheumatoid arthritis were stiffness, swelling and pain in the joints in addition to other symptoms that he described; that Imdrin taken as directed or in double the dosage would have little if any effect on the pains of rheumatoid arthritis; that in other cases there might be temporary partial relief; that Imdrin could in no event be relied upon to usually or ordinarily relieve the pains of rheumatoid arthritis completely. (R. pp. 328, 329, 330.) Dr. Rosenberg stated that the symptoms of infectious arthritis were dependent on the germ causing the arthritis; that the usual symptoms were pain, swelling of the joints, and various degrees of systemic symptoms; that Imdrin,

taken as directed or in double the dosage could have little if any effect on the pain in most cases of infectious arthritis; that in no event could Imdrin be depended upon to usually or ordinarily relieve the pains of infectious arthritis completely (R. pp. 330-333).

Thus, before giving his opinion that Imdrin was not an adequate, effective or reliable treatment for the symptoms of the various kinds of arthritis and rheumatism, Dr. Rosenberg had discussed in detail the symptoms of each of the various kinds of arthritis mentioned in proposed finding No. 8.

Dr. Wolpaw:

Dr. Ralph Wolpaw stated unequivocally that Imdrin either taken as directed or in double the dosage, was not in his opinion an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis or rheumatism, including gout, fibrositis, neuralgia, bursitis, neuritis or sciatica (R. pp. 520, 521). Before making that statement, he, like Dr. Rosenberg, had discussed the various symptoms including the pain, and the limited effect of Imdrin on the pains of sciatica (R. pp. 493-496), neuritis (R. pp. 498-500), neuralgia (R. pp. 500, 501), fibrositis (R. pp. 502, 503), bursitis (R. pp. 503-506), gout (R. pp. 506-509), osteo-arthritis (R. pp. 509-511), rheumatoid arthritis (R. pp. 511-514), infectious arthritis (R. pp. 514-516).

Dr. Barton:

Dr. Barton also stated unequivocally that Imdrin, taken as directed or in double the dosage, in his opinion was not an adequate, effective or reliable treatment for the symptoms or manifestations of neuritis, fibrositis, neuralgia, sciatica, bursitis or gout (R. pp. 433, 434). Through oversight he was not asked whether it was an adequate, effective or reliable treatment for the symptoms of rheumatoid arthritis, osteo-arthritis or infectious arthritis. However he did state that pain was a cardinal symptom of all types of arthritis and rheumatism (R. p. 439). He discussed the symptoms of, and the limited effect of Imdrin on the pain of infectious arthritis and stated that the measures to be used against infectious arthritis would depend upon the infection causing it (R. pp. 387, 428-430). He had also

discussed the symptoms of, and the limited effect of Imdrin on the pains of rheumatoid arthritis (R. pp. 387, 391, 426, 427), neuritis (R. pp. 407-410), neuralgia (R. p. 410), fibrositis (R. pp. 411-415), bursitis (R. pp. 389, 415-419), and gout (R. pp. 391, 419, 421).

Each of these experts, Dr. Rosenberg, Dr. Wolpaw and Dr. Barton, emphasized over and over again throughout their testimony that the treatment of both the disease and the symptoms in every rheumatic condition had to be on an individual basis.

As against the testimony of the three experts with their outstanding qualifications, we have the testimony
51 of Dr. Weisberg, Dr. Arnold Black, Dr. Lawrence H. Mayer and Dr. Aaron Arkim, plus the testimony of the lay User Witnesses for what it is worth. None of these doctors had ever used Imdrin and they gave no opinion as to its effect on rheumatic conditions or the symptoms thereof. Their opinions related solely to the effect of salicylates in various dosages.

Upon close scrutiny, it will be seen that the testimony of none of these doctors, except that of Dr. Mayer varied materially from that of the experts who testified in support of the complaint.

Dr. Weisberg:

The position of respondents in this case is best illustrated by the following questions and answers of Dr. Weisberg, appearing on page 579 of the record:

"Q. In those conditions doctor, in which salicylate therapy is given and in which relief of pain and discomfort was obtained will you tell us what effect if any it would have on accompanying redness or swelling?

"A. Not infrequently of course pain is present without redness or swelling. In those instances in which all of those conditions are found simultaneously it happens not infrequently that when pain subsides there is diminution of redness and swelling.

"Q. Will you tell us what your experience has been in the administration of salicylate therapy when pain is subsided in reference to immobility of the part affected?

"A. It is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part."

In other words the sole contention of respondents seems to be that when the pains of arthritic conditions are
52 relieved by salicylates there is an accompanying relief of redness, swelling and stiffness. This admits that unless the pain is relieved, there will be no relief of swelling or stiffness.

At this point attention is again called to the fact that the testimony of Dr. Rosenberg, Dr. Barton and Dr. Wolpaw shows that pain is a cardinal symptom of all forms of rheumatism and arthritis; that in some of these conditions, stiffness is also a symptom; in some conditions swelling is a symptom accompanying the pain; and in some conditions, pain, swelling and stiffness, are all three symptoms; that these experts who testified in support of the complaint, have said that Imdrin is not an adequate, effective or reliable treatment for the symptoms of any kind of arthritis. Therefore, according to them, Imdrin could not be an adequate, effective or reliable treatment for pain, stiffness or swelling, where any one or all three of these are present as symptoms.

On cross-examination, Dr. Weisberg stated, R. p. 618:

"The Witness: As I recall my words, of course, these are not exact words but they contain the meaning, I claim salicylates do relieve the pain of arthritis, and then I added when pain is relieved not infrequently there is a diminution of the redness and swelling and increased mobility. I didn't state it was the salicylates that would produce that effect."

And on page 619, the following question was asked and answered by him as follows:

"Q. The pathological changes, that is, at least among the pathological changes that occur in muscles and connective tissue in rheumatoid arthritis is inflammatory changes, as I understand you to say.

"A. Yes, sir."

And on pages 626 and 627, the following questions and answers:

53 "Q. Now, doctor, what is the synovial membrane?

"A. That is the membrane which lines a joint space. It is the membrane which in effect creates the cavity which exists around a joint.

"Q. Now, in cases of rheumatoid arthritis isn't it true that much of the swelling is due to the inflammatory thick-

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ening of the synovial membrane and connective tissue we might add?

"A. Yes.

"Q. Now, doesn't that swelling persist as long as those membranes and connective tissue remain thickened?

"A. Yes.

"Q. And the thickening is due to the inflammatory process?

"A. Yes.

"Q. And the cause of the inflammatory process is unknown?

"A. Correct."

And on page 628, the following questions and answers:

"Q. By the way, while we are talking about the stiffness doctor, in rheumatoid arthritis you do get a certain stiffness and deterioration of the joint itself sometimes, do you not?

"A. That is right.

"Q. Ankylosis?

"A. Right.

"Q. It is not your contention that salicylates could affect that stiffness, is it?

"A. Once it has been established, no, sir.

54 "Q. Now, the kind of stiffness that you are talking about then that is affected by salicylates is the initial stiffness on the onset of the disease, is that correct?

"A. That is right.

"Q. And only that kind?

"A. Not that resulting from ankylosis."

The formula for Imdrin shows that each tablet contains acetylsalicylic acid (aspirin) 1.9 grains and manganese salicylate 1.5 grains or a total of 3.4 grains of salicylates. The directions show 2 tablets before each meal or 6 tablets per day. This is a total daily dosage of 20.4 grains of salicylates. (See paragraph 2 of the complaint which is admitted.)

Attention is directed to the following questions and answers of Dr. Weisberg on page 629:

"Q. Now, a person who has rheumatoid arthritis, we will say, and he comes in with an inflamed elbow joint, swelling, redness, immobility of that joint and has intense pain as a result thereof, what dose of salicylate, what range dose would you give him?

"A. In such a hypothetical case, and this is a guess on my part, of course, I would say a dose of anywhere from thirty to ninety or more grains a day.

"Q. You don't think then that a dosage of nineteen or twenty grains of salicylate a day would affect much relief of the pain in that condition?

"A. Anything is possible in medicine but I doubt that.

"Q. Now, doctor, there are cases in which the pain is so intense, with rheumatoid arthritis now, there are cases in which pain is so intense that salicylates practically have no effect, aren't there?

"A. Sure.

55 "Q. Those type of cases you would have to give a narcotic, is that correct?

"A. With some reluctance."

Thus respondents' own so-called expert, Dr. Weisberg, while claiming on direct examination that reduction of swelling and stiffness followed from the relief of pain of arthritic conditions,—admitted on cross-examination that he made no claim that salicylates would produce that effect. He admitted on cross-examination, that the joint swelling in rheumatoid arthritis was due to the inflammatory thickening of the lining membrane of the joint and the connective tissue; that the swelling would persist as long as the inflammation was there and that the cause of the inflammation was unknown. He admitted further that in a case of rheumatoid arthritis the stiffness caused by joint deterioration could not be affected by salicylates; that the amount of salicylates in the daily dosage of Imdrin when taken as directed would not affect much relief of pain of rheumatoid arthritis, and that there were cases in which no amount of salicylates would have any affect on the pain.

Dr. Weisberg further admitted on cross-examination, that he had never specialized in arthritis and rheumatism, had never been on the staff of any arthritis clinic at any hospital and had never published any scientific paper on the subject of arthritis or rheumatism (R. pp. 608-609).

Dr. Black:

Dr. Arnold Black, the second of respondents' medical witnesses, stated on direct examination on page 646 of the record as follows:

"Q. Doctor, in your dispensing salicylates for the re-

lief of the aches and pains and discomfort of rheumatism or arthritis, will you tell us whether or not there is any effect when pain is relieved on the accompanying reddening or swelling that may exist?

"A. Well, if you specify, for example, rheumatoid arthritis and if there is some relief from pain by the ad-
56 ministration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation.

"Q. And, Doctor, would you tell us what effect the salicylate therapy would have, just as you answered, regarding the mobility of the joint or muscle affected?

"A. Well, when there is relief of pain, there is reduction in muscle spasm, and there is increase in mobility except where an ankylosis has existed previously.

"Q. And, Doctor, will you tell us what you mean by ankylosis?

"A. An ankylosis joint is one that is fused in which there is absolutely no mobility. It is rigid."

Yet on cross-examination beginning on page 658 of the record he stated as follows:

"Q. Your approach to the treatment of pain in rheumatoid arthritis is on an individual basis with the patient?

"A. Yes.

"Q. You can not say, as I take it, that a certain dosage of salicylates will decrease the pain in any case of rheumatoid arthritis?

"A. That is correct.

"Q. So any preparation that contains a certain fixed dose and is advertised for the relief of arthritis, relief for the pains of arthritis, that would work in some cases, and in some cases it wouldn't work, isn't that about right, Doctor?

"A. That is correct."

And on page 667 the following testimony was given:

57 "Q. Now, those who received or who would receive, I believe you said that there was some classification in which Mr. Gettlemen drew that you said, I believe, that 20.4 grains of salicylates per day would produce some measure of relief, or what did you say about that?

"A. Well, he asked me if in the average case of fibrositis there might be some relief from about 20 grains

of salicylate a day and I believe I said that there would be some help from that amount of medication.

"Q. Now, if you can treat them as average cases, would 20 grains of salicylates per day furnish complete relief from the pains accompanying fibrositis, in an average case of fibrositis?"

The answer to the last question by Dr. Black is found on 669:

"Q. Doctor, do you remember the question?

"A. Yes, sir, I do. I would say that in the average case that that dosage would be a little low.

"Q. So that that dosage at least could not be depended upon to furnish complete relief of the pains accompanying the average case of fibrositis?

"A. Not complete relief, no."

At one place in his testimony Dr. Black stated on page 657 as follows:

"Q. Doctor, during the period of acute inflammation of the muscles and connective tissues causing the muscle spasm in rheumatoid arthritis, would motion of the affected joints aggravate the underlying inflammation?

"A. Yes, a constant motion would aggravate the situation.

58 "Q. And if salicylates cut down the pain, would not the patient be more likely to move the affected joint than if the pain had not been cut out?

"A. I think that there would be a little increase in motion if the pain were cut down, but there would also be a part of this that would be due to the increase in the muscle spasm because of the decrease in the pain."

And at another point in his testimony he stated on page 651:

"Q. You have seen cases, I suspect, where the pain was so intense with rheumatoid arthritis that no amount of salicylates would have any effect to speak of, have you not?

"A. Well, I can't agree a hundred per cent with that. I think that we give all of these patients salicylates. Some of them need some narcotics with it too. Sometimes the salicylates alone won't help, but I think the two together would potentiate the effects of each other.

"Q. What else would you do for that patient, Doctor?

"A. I would prescribe physiotherapy, perhaps in an attempt to straighten the joint out.

"Q. What would that consist of?

"A. Well, again, depending upon the acuteness of the case, it might consist merely of some hot packs, and some mild massage and a little bit of stretching on the part of the physiotherapist. It might also consist of some splinting at night and even intermittently during the day to prevent the joint from becoming more deformed.

"Q. What is the splinting for?

"A. Well, the splinting helps to rest the joint.

"Q. Does the joint in that condition need rest?

"A. Yes, it does.

59 "Q. What else would you do for him?

"A. Of course, it can't be splinted all the time. It has to be taken out at intervals and put through a range of motion. We may have to put traction on the joint. Sometimes cortisone or ACTH is used for these patients. Sometimes we give them gold. It is rather difficult to generalize without having a specific case in mind."

Thus Dr. Black seems to agree with the experts who testified in support of the complaint that treatment of pain in these conditions has to be on an individual basis; that he cannot say that a certain dosage of salicylates will decrease the pain in all cases; that he has seen cases that would require salicylates plus narcotics to have any appreciable effect on the pain; that in the average case of fibrositis, salicylates in the daily dosage contained in Imdrin would be a little low and certainly could not be depended upon to furnish complete relief of pain; that even if salicylates did cut down the pain during an acute attack of rheumatoid arthritis, thereby causing more mobility in the joint, a constant motion would aggravate the underlying inflammation; that what a joint needs in such case is rest, such as is afforded by splinting, rather than motion.

Dr. Arkim:

Another of respondents' medical witnesses, Dr. Aaron Arkim did not say anything of consequence to support respondents' theory of the case. On the contrary, he stated as follows on cross-examination on page 717:

"Q. And, doctor, I take it from what you said in cases other than rheumatic fever you give salicylates for what relief of the pain it may afford?

"A. Without any expectation of any specific effect. In

fact, I might add here that salicylates are not specific for any disease, whether it be acute rheumatic fever or any other. It is not a cure of any disease.

60 "Q. Take a case of rheumatoid arthritis, for instance, doctor, the temporary and in many cases partial relief of the pain from salicylates is that what you would expect and all you would expect?

"A. That is all I would expect in such cases."

Dr. Mayer:

Respondents' witness, Dr. Lawrence H. Mayer, stated on direct examination that a daily dosage of 20 grains of salicylates per day would relieve the pains and discomforts accompanying rheumatism and arthritis (R. p. 686). He stated this on direct examination without any qualification or differentiation in regard to the different kinds of rheumatism and arthritis.

On cross-examination on page 688 he stated as follows:

"Q. Now, there is only a certain amount of pain that salicylates will relieve too, isn't there, doctor?

"A. That is right.

"Q. I take it that you have seen cases of arthritis in which no amount of salicylates would do any good as a practical proposition, haven't you?

"A. Yes.

"Q. In those cases would you sometimes use narcotics as a temporary measure, I mean?

"A. I wrote an article that covered that pretty well, when I stated that the treatment for arthritis that we had a new treatment every week and we could keep it up for three thousand years, there are that many different remedies, directed at pain for arthritis.

"Q. Well, you don't always use salicylates then for the pain, is that correct?

"A. No, that is very true.

61 "Q. You use other things?

"A. That is right.

"Q. Now, could this be true, doctor: You have said that pain is subjective, with which we agree, of course. What is a severe pain to one person would in all probability or might be not a severe pain to another one, is that not correct?

"A. Yes.

"Q. And a dose of salicylate that might relieve pain

in one person might not relieve the pain in another person.

"A. Oh, yes, that is true—particularly among lawyers."

His description of the use of a certain formula, Aciform No. II, beginning on page 690 and ending on 696 is so far out of line with the experience of all other doctors testifying for both sides as to render it improbable, and to discredit his opinion evidence on the value of salicylates. He further contradicted himself in the following statements on page 706:

"Q. Did I understand you to say that the pain was the indication of the severity of the arthritis, the amount of pain was the indication of the severity of the arthritis?

"A. Yes.

"Q. Sir?

"A. Yes.

"Q. Don't you have many cases of severe arthritis where there is little or no pain?

"A. Yes."

Although time may prove his prophecy on pages 702 and 703 correct, it is so far out of line with current thinking of the best informed experts as to put this witness in 62 a class by himself. The idea that osteo-arthritis, just to take one example, is the result of infection, runs counter to the opinion of all other experts. According to them, it is a condition resulting from wear and tear of the joints, over-weight, age and bad posture, all of which contribute or may contribute to the condition.

Dr. Robinson:

This expert dealt with the causes of stiffness and swelling in the various forms of arthritis and the effect or lack of effect on those causes. It is axiomatic that if stiffness and swelling are due to certain causes, it is necessary to remove those causes to relieve these conditions. Dr. Robinson said that stiffness in osteo-arthritis is due to two factors, the stress and the strain on a joint and the vulnerability of that joint to the strees and strain (R. pp. 1086, 1087); that salicylates have no effect on either of these two factors (R. p. 1089); that stiffness in rheumatoid arthritis may be due to different causes, ankylosis, muscle atrophy, swelling or inflammation; that salicylates have no effect on any of these causes (R. p. 1090); that stiffness in fibrositis may be due to inflammation in certain cases and in other

cases to unknown causes; that salicylates do not affect stiffness due to inflammation; that stiffness due to unknown causes in fibrositis may be affected by salicylates to a variable degree, but not in a dependable fashion, where they alone could be considered an adequate treatment for stiffness (R. p. 1091); that stiffness may be present in gout, but when present is not affected by salicylates (R. pp. 1094, 1095).

Dr. Robinson further said that swelling is very unusual in osteo-arthritis; that when present salicylates had no effect upon it; (R. p. 1091, 1092) that swelling in rheumatoid arthritis is due to the underlying inflammatory process, on which salicylates will have no effect; (R. p. 1092, 1093) that swelling may be present in fibrositis; that when present it is due to the inflammatory changes which are not affected by salicylates; (R. p. 1093) that swelling may be present in gout; that when present salicylates will have no effect on it (R. p. 1093, 1094).

63 Dr. Lockie:

Dr. Lockie stated that salicylates would have no effect upon the primary cause of stiffness in osteo-arthritis; that if a person with a mild case of osteo-arthritis took salicylates, that person might be less conscious of the stiffness; (R. p. 1169) that there are various causes of stiffness in rheumatoid arthritis; (R. p. 1170) that it may be due to ankylosis, inflammation, muscle atrophy or swelling; that salicylates will have no effect on stiffness in rheumatoid arthritis due to ankylosis, muscle atrophy or swelling; that when due to inflammation in the early phase of rheumatoid arthritis, salicylates may make a person less conscious of the pain and discomfort and help relieve stiffness in that manner; (R. p. 1170, 1171, 1172, 1173) that salicylates will not affect the cause of stiffness in bursitis; (R. p. 1173) that salicylates will not affect the cause of stiffness in neuritis or sciatica which is a special form of neuritis; (R. p. 1173, 1174) that stiffness in gout may be due to deposits of urate in the joint and when due to that cause will not be affected by salicylates; (R. p. 1174, 1175) that when stiffness in gout is due to inflammation, some people get temporary relief from salicylates, but they are not nearly as effective for this as colchicine, which is a specific (R. p. 1175).

Dr. Lockie also testified that salicylates will not affect

the underlying inflammatory process that is the cause of swelling in rheumatoid arthritis; (R. p. 1177) that swelling is not usually present in osteo-arthritis, and when present will not be affected by salicylates; (R. p. 1176) that swelling is not usually present in bursitis and is not present in neuritis; except there may be miscrscopic swelling in inflammatory neuritis or inflammatory sciatica; that when present in these conditions it will not be affected by salicylates (R. p. 1177, 1178).

Summing up the testimony of the expert witnesses on the 8th proposed finding, it was agreed by all of them that salicylates will not affect the more severe pains of arthritic and rheumatic conditions, and that the relief of the lesser pains would be temporary and vary with the individual case. It was contended by Dr. Weisberg and Dr. Black that when the pains were relieved by salicylates, relief
64 of stiffness and swelling usually followed. They both however admitted that there were many causes of stiffness that would not be affected by salicylates even if the pains were relieved. Both said that the amount of salicylates in the daily dosage of Imdrin is too low to furnish much relief of pain. Therefore, even taking their testimony at its best, relief from any of the symptoms is unreliable. Doctors Lockie and Robinson dealt with stiffness and swelling as separate symptoms, and said that with few exceptions salicylates would have no effect. Doctors Rosenberg, Barton and Wolpaw had dealt with the symptoms as a whole and denied that salicylates would have any effect, except on the pain.

Respondents' User Witnesses.

There were 13 user witnesses who testified for respondents. It was stipulated that one additional user Robert S. Greenfield, if called would give the same testimony in regard to the history including his aches, pains and conditions, the time and manner of use of Imdrin and the description of his condition thereafter, as Dr. Edward B. Miller testified was related to him by this user (R. p. 1068, 1069). The 13 users of Imdrin who testified were Peter J. Maretta (R. p. 761-775), Mrs. Rhoda Lipsie (R. p. 775-789), Mrs. Ida Klaus (R. p. 789-805), Mrs. Ingeborg Larson (805-823), King Hays (844-855), Arthur Fremault (855-867), Louis Jacobs (879-902), E. H. Carr (902-906), Mrs. E. H. Carr (907-913), Mrs. Katherine Gott (914-

921), Bernard W. Vinissky (922-946), Mrs. Marjorie J. Marchena (987-1003), Mrs. Betty Raaberg (1003-1019).

In connection with the testimony of these lay witnesses attention is called to the holding of the Commission in the matter of Ward J. Miller, trading in Amber-Ita, reported in 19 F. T. C. Decisions, page 57. On page 72 in the Findings the following statement is made:

"Respondent introduced the testimony of 13 lay witnesses. Each testified that he or she had been diabetic and had been benefited by taking Amber-Ita. These patients were, in some instances, taking insulin or diet, or both, along with their Amber-Ita; in other instances no control of these patients was exercised; and in still others the alleged diabetic condition was founded on heresay; that is to say these patients said that some doctor had told them that they had diabetes. If they were taking either insulin or diet or both with their Amber-Ita, its therapeutic value or lack of it could not be determined as either of the former, or both, is proper treatment in diabetes and no one could tell which was responsible for the improvement of these patients, if there was any improvement. The testimony of these lay witnesses is of no probative value."

It is true that the situation differs in the instant case from that in the Amber-Ita case in that these lay witnesses were not allowed to state the disease from which they claimed to have suffered. However the fact remains that none of them had any complaints at the time they were examined by respondents' doctors for the purpose of testifying in this action; that there were no controls over any of them while they were taking Imdrin; that Mrs. Rhoda Lipsie (R. p. 827), Mrs. Ida Klaus (R. p. 829), Mrs. Ingeborg Larson (R. p. 830), Arthur Fremault (R. p. 839), E. H. Carr (R. p. 948) were diagnosed by Dr. Weisberg as having had hypertrophic arthritis and Mrs. Marchena (R. p. 1031), Mrs. Betty Raaberg (R. p. 1039) were diagnosed by Dr. Miller as having had osteo-arthritis, the references to the record being where the doctors' diagnosis of each of these persons appears. The record shows in a number of instances that hypertrophic arthritis, degenerative arthritis and osteo-arthritis are all different names for the same thing. If these lay witnesses had osteo-arthritis they must have had a mild case since none of them had any complaints at the time they were examined by respondents' doctors. Most of them had not gone to a

doctor for their complaints. Dr. Miller testified that in mild cases of osteo-arthritis remissions occurred that may last for months (R. p. 1054). Hence in line with the thinking in the Amber-Ita case no one could tell what was re-
66 sponsible for an improvement in the symptoms reported by these seven lay witnesses. It may have been a remission.

Again, Trial Examiner Lipscomb held that where the doctor's opinion was based largely upon the history of the patient as told to him when the patient was not seeking medical treatment, but was coming to the doctor preparatory to taking the witness stand, such opinion was not admissible in evidence (R. p. 954-955). Dr. Weisberg's diagnosis of Peter J. Maretta having had fibrositis (R. p. 840) and King Hays having had gout (R. p. 972) was based entirely on the history as detailed by the patients. Dr. Miller's diagnosis of Mrs. Marchena having had osteo-arthritis was based entirely on the history outside of his fluoroscopic finding of narrowing joint space in her shoulder, which he admitted might not show up upon proper X-ray examination (R. p. 1050, 1051). Furthermore, Dr. Miller's testimony did not quite show a diagnosis but an impression of Mrs. Marchena's previous condition (R. p. 1058) and in regard to Mrs. Betty Raaberg he said he could not give a clear answer because "I am unclear in my own mind". (R. p. 1064) Dr. Weisberg's original cross-examination, (R. p. 582-629) his eagerness to help respondents, as evidenced by going to suite occupied by respondents' counsel to examine the witnesses, his failure to even let some of these lay witnesses know he was a doctor, his cursory examination of several of them all detract from the weight to be given his testimony.

If these lay witnesses did not have the conditions or diseases for which respondents advertise the preparation, the fact that they may have had the pains described by them, took Imdrin, and those pains went away is of no value as a defense to this action. All in all, it is believed, as was said in Amber-Ita case, that "the testimony of these lay witnesses is of no probative value."

Ninth Proposed Finding:

Through the use of the advertising in evidence, respondents have represented directly and by implication that Imdrin is a remarkable, amazing, sensational new discovery of scientific research.

67 **Reason for Proposed Finding:**

See Comm. Ex. 2 where it is stated that "Imdrin contains a remarkable discovery"; Comm. Ex. 3 where it is stated "Imdrin is unlike anything you've ever known . . . contains an entirely new scientific discovery"; Comm. Ex. 4 "compounded with a remarkable new ingredient"; Comm. Ex. 5 "Imdrin contains a remarkable research discovery"; Comm. Ex. 6 "contains an entirely new scientific discovery". See also Comm. Ex. 20 and others which state "Amazing New Discovery for Rheumatism, Arthritis"

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Contains Sensational New Research Discovery".

Tenth Proposed Finding:

The only active ingredients in Imdrin are manganese salicylate and acetylsalicylic acid (aspirin). The action of these drugs have been known for many years, and is not a new discovery of scientific research. Their limited effect upon the pains of arthritic conditions is neither remarkable, amazing or sensational.

Reasons for Proposed Finding:

The formula for respondents' preparation as set forth in paragraph 2 of the complaint is admitted in the answer. It is again set forth in the second proposed finding. There is no need to repeat it here. Dr. Shorr testified that the amount of succinate obtained from the daily dose of Imdrin would all be turned into sugar in the liver, resulting in .56 grams of sugar (R. p. 115, 116). (See Comm. Ex. 35 which is the bottle containing that amount of sugar for illustration). Dr. Shorr further stated that to obtain a sustained succinate effect in the average man, even if the succinate should get by the liver as such, it would require 345 times the amount of succinic acid in the daily recommended dose of Imdrin: (R. p. 124, 125) that the succinate effect if achieved would be deleterious rather than beneficial. (R. p. 125, 126)

Dr. Shorr was the first expert witness and since he testified there has been no further mention of any effect of the calcium succinate in Imdrin. All of the experts
68 who testified had the formula in front of them, were familiar with it and stated that the salicylates were the only effective ingredients. Dr. Weisberg, respondents' expert so agreed on the 3rd page of his affidavit which is

Comm. Ex. No. 39. Respondents' other experts only testified as to the efficacy of salicylates (aspirin and other salicylates) in the treatement of rheumatic symptoms) None of them claimed any more efficacy for Imdrin than for salicylates. The thiamine chloride and caffeine in the preparation are in too small quantities to be effective for anything (R. p. 206).

The use and effect of salicylates in the treatment of rheumatic pains has been well known for a long time, at least since the advent of aspirin in tablet form, which according to common knowledge has been many years ago. Dr. Weisberg stated that salicylates enjoy the reputation of being an excellent analgesic in rheumatism and arthritis. (R. p. 578, 579) If salicylates enjoy that reputation, their effect is not new, sensational, amazing or remarkable. Life itself may be called remarkable, amazing or sensational in one sense that those terms may be used, since the process is little understood, but the impression created by these words, particularly when coupled with the words "new discovery" in advertising Imdrin give the impression that here is something different; here is a cure-all for arthritic sufferers. That impression is enhanced by mention of the wonder-working drugs, sulfa and penicillin, in some of the advertising. (See Comm. Ex. 20 and others).

In the case of *Carlay Co., et al.* v. *F. T. C.*, 153 F. (2nd) 493, reference is made to other cases holding that the words "easy", "perfect", "amazing", "prime", "wonderful" and "excellent" are regarded in law as mere puffing or dealers talk upon which no charge of representation can be based. Investigation of the cases cited shows the following statement from *Kidder Oil Company* v. *F. T. C.*, 117 F. (2d) 892:

"Petitioner's representation that its product will enable a motor car to operate an 'amazing distance' without oil or that its product is a 'perfect' lubrication; evidently is some exaggeration. To what extent however, it is difficult to say. Such terms are largely a matter of personal opinion. What might be an 'amazing distance' to one per-
69 son might cause no surprise to another. So far as we know there is nothing 'perfect' in this world, but still it is a common term which undoubtedly means nothing more that that the product is good, or of high quality. We can conceive of situations where the use of such words

might be deceptive and even fraudulent. As used by petitioner, however, we are of the opinion that they are nothing more than a form of 'puffing' not calculated to deceive." (underscoring mine)

It is submitted that here, where such words are used to describe a preparation the effect of which is entirely dependent upon the salicylate content, drugs which have been on the market for many years, is such a case as the court had in mind in the underscored portion of the quotation. The situation in the Kidder Oil Company case was not similar to the instant case. There, respondents had a motor oil that the court found was of more benefit to a motor than other oils because of a new ingredient, graphite.

Eleventh Proposed Finding:

Through the use of the advertisements in evidence respondents have represented directly and by implication that by taking Imdrin those suffering from all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis will be enabled to resume their normal living and usual occupations.

Reasons for Proposed Finding:

Comm. Ex. 2 and 5 "Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past".

Comm. Ex. 4 and 7 "Imdrin which has helped so many folks to again regain restful sleep, to resume normal occupations and once again to lead rich active lives".

Comm. Ex. 13, 14, 15, 16, 17, 18, 19 and 20 "Resume a more normal active life".

Twelfth Proposed Finding:

Persons afflicted with these ailments so severely as to interfere with their normal habits of life or their ability to carry on their regular occupations will not be enabled to resume such habits or occupations by taking Imdrin.

Reasons for Proposed Finding:

All of the expert testimony on both sides supports this finding:

Dr. Rosenberg, beginning on page 316 of the Record discussed each one of these conditions and said that Imdrin

would only afford temporary relief of the mild pains of these various conditions; that there were many cases in which the pains were so severe that Imdrin given in double the prescribed dosage would have no effect on them; that Imdrin could not be depended upon to ordinarily relieve the pains of these various conditions completely.

Dr. Barton discussed each of these conditions beginning on page 404 of the record and said practically the same thing as Dr. Rosenberg.

Dr. Wolpaw also discussed each of these conditions beginning on page 493 of the record and said practically the same thing as Dr. Rosenberg and Dr. Barton.

The most Dr. Weisberg said was that Imdrin should provide a measure of relief, depending upon the individual circumstances. (R. p. 581, 582) On cross-examination he said that in rheumatoid arthritis, with an inflamed joint, swelling, redness, immobility of the joint and intense pain, he doubted that a dose of 19 to 20 grains of salicylate a day would effect much relief of the pain. (R. p. 629)

Dr. Black said on cross-examination that in the average case of fibrositis a dosage of 20 grains of salicylates a day would be a little low. (R. p. 669)

The record shows as stated before in these findings that the daily dose of salicylates in Imdrin when taken as directed is 20.4 grains.

Dr. Mayer said on cross-examination that he had seen cases of arthritis where no amount of salicylates would do any good. (R. p. 688)

Dr. Arkim made the same statement as Dr. Mayer on this point (R. p. 717) and further that in rheumatoid
71 arthritis the temporary and in many cases the partial relief of pain would be all that he would expect from salicylates. (R. p. 717)

It goes without saying, that those persons whose normal habits of life and ability to carry on their regular occupations are stopped by these various conditions are the ones having the more severe cases. The testimony is in accord that in these cases Imdrin would afford no relief as a practical matter.

Thirteenth Proposed Finding:

Through the advertising in evidence, respondents have represented directly and by implication that Imdrin will correct any disturbance of and will insure adequate function of the vital enzyme systems of the blood and bones.

Reasons for Proposed Finding:

In Comm. Ex. 37 respondents state:

"For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect."

Fourteenth Proposed Finding:

Imdrin, however taken, will not correct disturbances of, nor insure adequate functioning of the enzyme systems of the blood and bones.

Reasons for Proposed Finding:

Dr. Shorr gave the only definition in the record of an enzyme and enzyme systems in connection with his explanation of the relation between enzymes and metabolism in the body. Beginning on page 79 of the record he said:

"A. We believe that faulty metabolism is connected with malfunctioning of enzyme systems, and in many instances we have been able to actually relate a specific faulty metabolism with specific derangements in
72 enzyme systems. This is a field which is still growing, so that we do not know the whole answer, all the answers, but we are progressively learning that enzymes are, in their relationships to metabolic processes, are of the highest importance in maintaining the body in health, and in the maintaining—

"Q. Now, Doctor, what is an enzyme?

"A. An enzyme is a constituent of living tissue which may often be separated from living tissue and still preserve, in its action, which catalizes or accelerates the rate of processes of living processes so that rates are determined, rated processes are accelerated to a degree which is far beyond the possibilities for that process to go on in the absence of this catalytic agent.

"Thus, two constituents might be in a test tube for centuries and not inter-react, or inter-react very slowly. But, by the intervention of an enzyme that reaction may be made explosive and so, in a living body, for example, many reactions are too slow, or so fast, that their speed is infinitely greater than could be expected if they were not helped by means of these catalytic agents. These catalytic agents are enzymes. They participate in the reaction, sort of like a bucket brigade taking energy from one molecule,

and transferring it to the other, and in so doing they assist these processes, usually remaining quite intact themselves, as they participate.

"Q. Now, Doctor, what is meant by the term enzyme system?

"A. An enzyme system would comprise an enzyme with some of its assistants, which are called co-enzymes, plus the foodstuff on which that enzyme operates, or series of foodstuffs on which that enzyme operates."

He had previously stated on page 78 of the record what metabolism is:

73 "It is a term that is used comprehensively to include all of those processes which take place in living organisms and which provide between the obtaining of foodstuffs, whatever they may be, whether they be plant or animal, the conversion of those foodstuffs into energy to support the vital processes by which living organisms survive, and it deals not only with intake, the utilization of the foodstuffs, the conversion of these foodstuffs into one variety or the other within the body, the release of energy from these foodstuffs, mediated by the ductless glands, by the enzyme systems and the waste products of this process, including the manner in which these waste products are dealt with by the organisms."

Dr. Shorr discussed the effect of salicylates on metabolism and the functioning of enzyme systems on pages 89-98 and stated on page 98 that the effect was deleterious. He next discussed the effect of succinates on metabolism and enzyme systems on pages 100-112 and stated on page 112 that he knew of no condition where it would be necessary or desirable to administer succinate to insure normal or adequate functioning on any enzyme system. He had previously stated on page 100 that the effect of succinate on the various enzyme systems was deleterious. He was then asked the following question on page 113 of the record:

"Q. Doctor, from your knowledge of tissue metabolism, would you say that combinations of succinate, as calcium succinate, and salicylate, as aspirin and manganese salicylate, will correct, restore to normal or maintain any enzyme system that is not functioning normally?"

His answer was:

"The Witness: Prefacing my answer by a statement that what I say is based on my opinion, that the combina-

tion of the salicylate and succinate ions represents no difference in terms of normal tissue metabolism than does each of these ions separately, I would say that the combination could not be expected to correct any enzymatic defects.

74 "By Mr. Callaway:

"Q. Or restore it to normal, or maintain it?

"A. Or restore it to normal or maintain it.

"Dr. Graef testified in part beginning on page 189 as follows:

"Q. Are pathological changes connected in any way with the functioning of enzyme systems?

"A. Yes, sir.

"Q. Could you explain that for us?

"A. The enzyme systems of the body, in so far as delicate balance of the internal chemical processes in the body which may be upset by any one of a number of injuries. Simple examples may make my point clearer.

The inhalation of an atmosphere poor in oxygen will upset the metabolism of the body, and in certain portions of the body an insufficiency of the oxygen will interfere with the enzymes which depend on oxygen for their normal role. Shutting off the blood supply to a part may do so. An infection, an injury due to a blow; at the point of injury, or where the infection sets up an abnormal pathological process, there you have a small chemical reaction. It may be larger, it may spread, in which the enzyme system is locally disturbed. As a part of the total disturbance of the total metabolism of the affected part.

"Q. Then is faulty metabolism connected with the functioning of enzyme system?

"A. Indeed. There are metabolic disturbances in which the basic fault appears to be a disturbance in the enzyme system, whether the enzyme is present in sufficient concentration or absent altogether, or blocked by a part of the abnormal process."

75 He also discussed separately the effect of succinates and salicylates on metabolism and enzyme and enzyme systems. After considering the formula and directions for use as set forth in the complaint, Dr. Graef was asked the following question on page 202:

"Now, Doctor, in your opinion, will Imdrin, taken as

directed, correct and restore to normal the vital enzyme systems in the blood and bones?"

His answer and other questions and answers in this connection shown on page 203 are as follows:

"A. It will not, in my opinion.

"Q. In your opinion, will Imdrin, taken as directed, correct and restore to normal the vital enzyme systems of the body?

"A. It will not, in my opinion."

"Q. Doctor, in your opinion, will Imdrin, taken as directed, insure normal and adequate functioning of the vital enzyme systems of the body, including those of the blood and bones?

"A. It will not."

This testimony of Dr. Shorr and Dr. Graef amply support this proposed finding. Respondent must have abandoned any defense of this charge, since none of their witnesses gave any testimony on the subject.

Fifteenth Proposed Finding:

The advertisements of respondents in evidence with respect to their preparation Imdrin has had the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations were true and into the purchase of substantial quantities of Imdrin by reason of such erroneous and mistaken belief.

Reasons for Proposed Finding:

That respondents' advertising had the capacity and tendency to deceive cannot be doubted. It was false, as
76 has been shown. That is all that is necessary. *Charles of the Ritz* v. *F. T. C., supra,* and cases therein cited. However, the above finding goes further than that and says that a substantial portion of the purchasing public has been misled. Reasonable inferences drawn from facts founded on substantial evidence are adequate to support findings. *Excelsior Laboratory Inc.* v. *F. T. C.,* 171 F. (2nd) 484. In the majority opinion of the Commission attached to the Findings and Order in the matter of *American Chemical Paint Company,* Docket No. 5135, 45 F. T. C. Decisions, p. 9, Commissioner Davis gave a clear explanation as to this inference in the following statement.

"If a seller falsely advertises a product and thereafter sells a substantial amount of such product, it is obvious

that members of the purchasing public who read the advertisements and who purchased that product were misled or unfairly influenced by the false statements made by the seller in his advertising."

Commissioner Davis further stated that the actual deception was present in such cases it was unnecessary to incur public expense in proving it, since the inference to support that finding can be so readily drawn.

Conclusion:

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

This follows as a matter of course from what has gone before.

Proposed Order to Cease and Desist:

It Is Ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation and its officers J. Sanford Rose and Jerome H. Rose, individually, and as officers of respondent Rhodes Pharmacal Company, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of respond-
77 ents' product designated as Imdrin, or any product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act any advertisement which represents directly or by implication:

(a) That said preparation is an adequate effective or reliable treatment for any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis;

(b) That said preparation will arrest the progress of or correct the underlying causes of or will cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis;

(c) That said preparation will have any effect upon any of the symptoms or manifestations of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis; except pain and fever:

POOR COPY

(d) That the effect of said preparation on the fever which may accompany some of these conditions will be more than such temporary effect as may be afforded in the individual case;

(e) That said preparation will have any effect on the more severe pains of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis; that the relief of the lesser pains accompanying these conditions is more than such temporary relief as may be afforded in the individual case;

(f) That the effect of respondents' preparation is remarkable, amazing or sensational or that it is a new discovery or the result of a new discovery;

(g) That persons afflicted with arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis so severely as to interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled to resume such habits or occupations by taking Imdrin.

78 (h) That Imdrin will correct any disturbances of or will insure adequate functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in paragraph one hereof.

Reasons for Proposed Order:

The complaint admits a certain amount of antipyretic effect follows the use of respondents' preparation. This was not an issue in the case. However such effect must be allowed for in the order. The remainder of the order is entirely supported by the findings.

Respondents may contend that (e) above is too stringent. There was no contention that Imdrin would have any effect upon any symptoms or manifestations except pain, swelling and stiffness. Respondents own experts only contended that swelling and stiffness would be relieved when the pain was relieved. Upon cross-examination respondents experts admitted that many kinds of stiffness and swelling due to arthritic conditions would not be relieved even when the pain was relieved by salicylates, and that

the relief of pain was an individual matter and not a dependable result. Therefore the evidence and proposed findings justify subparagraph (c) above. Since the evidence justifies such order, it ought to be made. Failure to make the order as strong as (c) above would in effect permit respondents to indirectly represent the preparation as a cure for arthritic and rheumatic conditions. Respondents preparation does have some effect on the pain in certain cases, and this limited effect is provided for in (e) above. If coupled with a promise of even limited relief from pain, respondents are allowed to represent any relief from stiffness and swelling that would be a representation of a cure, because, to the layman, arthritis means pain, stiffness and swelling. These three symptoms are represented as meaning arthritis by the respondents in their advertising in evidence.

Respondents may also contend that (e) above ought to be worded to allow them to advertise the preparation for the relief of pain without further qualification, on the 79 theory that the word "relief" in connection with the word "pain" means the removal, in whole or in part of the pain. That is the dictionary definition. However, the court has held

"• • • as to dictionaries, words mean what people understand them to mean and dictionaries are only one source; persons whose business carries them among the buyers of a product are certainly qualified sources of information as to the buyers' understanding of the words they hear and use."

(*Benton Announcement Company, Inc.* v. *Federal Trade Commission*, 130 F. (2d) 254.)

Dr. Rosenberg was, therefore, a qualified source of information as to what relief of pain, as used by respondents, means to persons suffering from arthritic condition. He said that it would mean complete relief from pain. Also, the same meaning was given by King Hayes and E. H. Carr, two of respondents' user witnesses, whose testimonies are shown in the record at pages 844-845 and 902-906, respectively.

Even under the dictionary definition the word "relief" in connection with the word "pain" may mean complete removal of pain to some people and partial removal of pain to others.

The evidence and the findings show that it will have no effect at all upon the severe pains of arthritic conditions. To both those who have severe pains and to those having lesser pains, who understand the word "relief" to mean complete relief of pain, such advertising would be deceptive. Where the evidence shows in detail, as it does in this case, how unreliable respondents' preparation is for the relief of pain, it is believed that for adequate protection of the public, the order should spell out in detail the results which may be expected from the use of the preparation.

Such an order qualifying the degree of relief to be expected is in line with other orders issued by the Commission.

80 In the matter of *Paul Case*, Docket No. 4813, 44 F. T. C. Decisions, page 205, the findings went into the degree of relief afforded by the preparation and the order prohibited respondent from representing that it would do more than temporarily relieve the minor pains. This case involved a salicylate preparation advertised for rheumatism and arthritis and the case was contested.

Similar orders qualifying the use of the phrase "relief of pain" have also been issued in other cases. See the order in *Seydel Chemical Company, et al.*, Docket No. 5693 and the order in *Frederick Godfrey*, Docket No. 5702.

Looking at it another way, suppose the order did not require respondents to qualify the type of relief from pain to be expected. There would be nothing to prevent them from continuing to advertise that Imdrin "stops the pain". Such advertising would be within the dictionary definition of "relief", and could not be said to be in violation of such order. Yet the evidence shows that Imdrin does not stop any but the minor pains. Spelling out in detail in the order the degree of relief from pain to be expected, will enable respondents to know just what is expected of them on compliance, and possibly avoid further litigation.

Respectfully submitted,

Joseph Callaway,
Counsel Supporting the Complaint.

November 15, 1951.

81 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

PROPOSED FINDINGS, CONCLUSIONS AND ORDER.

(Filed Federal Trade Commission Received Dec 3 1951 Secretary.)

It is proposed that the Trial Examiner make the following findings:

1. That the respondents caused to be disseminated in interstate commerce certain radio and newspaper advertising of their product "Imdrin," said advertisements having been heretofore received in evidence as Commission's exhibits.

Factual and Legal Basis for Finding:

Transcript of Proceedings, page 2.

Transcript of Proceedings, pages 6, 9, 11, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 36, and 37.

2. That the advertisements so disseminated by respondents mean only that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that "Imdrin" will provide treatment and cure of arthritis and rheumatism.

Factual and Legal Basis for Finding:

82 While the complaint herein charges that the import of respondents' advertising is to represent to the public that "Imdrin" is a cure or an adequate and effective treatment for arthritis and rheumatism (Tr. 2), such allegations are denied in respondents' answer (Tr. 2) and are not proof of such meaning.

To determine the true meaning of respondents' advertisements the Trial Examiner has before him (1) the advertisements themselves, (2) the testimony of one Dr. Edward F. Rosenberg as to what he believed his patients would understand the ads to mean (Tr. 258 to 313, and 558 to 572), and (3) the testimony of Abraham M. Breiman, an investigator and specialist in consumer research (Tr. 720 to 756), who testified to the results of a survey he conducted in order to learn what real members of the

purchasing public would understand the "Imdrin" ads to mean.

It is recognized that courts have held that the Federal Trade Commission need not sample public opinion before it can determine the meaning of advertising, *Aronberg* v. *Federal Trade Commission*, 132 F. 2nd 165; but those same decisions say that the Commission must make such determination after consideration of all the evidence in the record, *Zenith Radio Corporation* v. *Federal Trade Commission*, 143 F. 2nd 29. In this case that evidence includes the results of the consumer survey conducted by Mr. Breiman, which is the only real factual evidence before the Examiner indicative of the reaction of real persons to the advertising in question.

83 The opinions expressed by Dr. Rosenberg were only guesses, since he could not remember even an approximate date (Tr. 560) or the name of a single patient with whom he had discussed the "Imdrin" ads in question (Tr. 561, 564 and 572), nor could he recall a single specific occasion of same. It is respectfully submitted that this doctor wholly failed to qualify himself as an expert on consumer reaction. He himself expressed doubt that he should be characterized as such (Tr. 564), and his cross-examination revealed a complete failure of basis or foundation upon which to predicate an opinion as to what someone else would understand an advertisement to mean. In addition to this lack of probability, respondents were deprived of all opportunity to test, try and evaluate any possible reliability of the doctor's rank guess and conjecture by his complete refusal (Tr. 572) and inability to divulge the sources of his information. This opposes every concept of opinion evidence.

On the other hand, respondents produced in evidence the results of a survey of 300 persons (Tr. 728), including 13 interviews obtained of customers in drug stores (Tr. 728), and the balance in factories, homes and retail establishments. These were interviews of factory workers, office workers, housewives, business men, some educated more so, some less so (Tr. 728). Only a small number of these persons were known to the sampler (Tr. 737). Most all of them were strangers. Each was shown representative samples of the advertising in question (Commission's Ex-

84 hibits 6, 8 and 13—Tr. 731) and, after having been allowed to read and study these ads, was asked suc-

cessively and in the alternative (Tr. 730, 743) whether the advertising promised him or her a relief from the pain of arthritis or rheumatism or a cure or effective treatment of those diseases. The results of the first or February part of the survey were, of 150 people interviewed 137 stated that these ads meant that "Imdrin" would provide relief of pain, and the balance of 13 said that the ads meant that "Imdrin" would provide treatment cure; that is 91.3 per cent of those consulted thought the ads meant or implied pain relief, while only 8.7 per cent thought that the ads meant that "Imdrin" would provide treatment or cure (Tr. 731). Similarly, of another 150 people interviewed in April, 1951, 136 or 90.7 per cent stated they understood the ads to mean that "Imdrin" would provide relief of pain of rheumatism and arthritis, as against 14 or 9.3 per cent who said that the ads meant treatment or cure (Tr. 732).

In the light of this specific testimony as to consumer understanding of the meaning of advertising, respondents believe that no amount of speculation or inference will suffice to show the contrary. That the courts are interested in knowing what the consuming public would testify an advertising representation would lead them to believe is evident from the opinion of Judge Major in *Allen B. Wrisley Co., et al.* v. *Federal Trade Commission*, 7 Cir. 113 F. 2nd 437, 440. In that case it was stipulated that if thirty persons, members of the consuming public, were called to testify, sixteen would say that they under-
85 stood "Olive Oil Soap" (so labeled) to mean "one the oil content of which is 100% olive oil." The Court said:

"In our judgment, such a stipulation can be given little, if any weight, and cannot be said to be substantial in view of the unanimous testimony to the contrary given by witnesses who appeared personally."

On the hearing of this case, counsel for respondents made this statement for the record (Tr. 755, 756):

"As indicated by the Trial Examiner when we were off the record, and I am in complete agreement with his statement in this regard, that there is no point in putting these records (of the survey) of Mr. Breiman in the record.

"I would, however, like to make this statement for the record, and that is that we are ready, by any means, to permit the government to have the names of these various

people who were asked the two questions, testified to by Mr. Breiman, and whose responses thereto were recorded here."

Respondents believe their survey was fair, thorough and revealing and provides the Trial Examiner with his only reliable evidence of consumer reaction.

3. That the quantitative and qualitative formula of "Imdrin" and of its active ingredients is as follows:

Acetylsalicylic acid	1.9 gr.
Manganese salicylate	1.5 gr.
Calcium succinate (anhydrous)	2.3 gr.
Caffeine	.16 gr.
Thiamine chloride	1 mg.

Factual and Legal Basis for Finding:

Complaint, page 2.

4. That since the causes of most rheumatism and arthritis are unknown, it is both unnecessary and impos-
86 sible to remove those causes in order to effect proper treatment. Such treatment is confined to the relief of the symptoms of rheumatism and arthritis.

Factual and Legal Basis for Finding:

It seems well agreed by all the eminent physicians who testified at the various hearings that there is no known cure for the common primary types of arthritis. Dr. Seymour Weisberg so testified (Tr. 580). He further testified (Tr. 619) "* * * it is not always possible" to correct the underlying causes of the pathological changes occurring in certain forms of rheumatism and arthritis. Further, Dr. Weisberg testified (Tr. 580) "It is not uncommon, as a matter of fact, to treat a condition without knowing the primary cause." He further testified that salicylate therapy for the alleviation of the pains of rheumatism and arthritis, whether or not it will remove the cause of such a disease, can be said to be an effective treatment or remedy for that disease.

Similarly, Dr. Arnold Black, testifying for respondents, said that when he gave or dispensed salicylates for rheumatism or arthritis he would call that a treatment (Tr. 645), and that "The approach to the treatment of a great many diseases these days is not an approach to the etiology because we do not know the etiology. It is frequently symptomatic" (Tr. 655).

Dr. Ralph Wolpaw, testifying for the Commission, said: "Any pain or ache will be classified as rheumatism in many cases" (Tr. 477); that osteo-arthritis is a normal
87 aging process (Tr. 527); he further stated (Tr. 529) that "patients coming in aren't too interested in causes, they are primarily interested in getting relief, so that we have to direct our efforts toward that."

Also, Dr. Evan M. Barton, for the Commission, testified that pain was the cardinal symptom in each and every form of rheumatism and arthritis (Tr. 353); that the alleviation of pain is important (Tr. 339); also that relief "is effective when the pain goes away" (Tr. 344).

It further appears from the record that with the decrease of pain and suffering will come increased mobility and subsidence of redness and swelling. Dr. Weisberg testified (Tr. 579) that "when pain subsides there is a diminution of redness and swelling"; that "it is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part" (Tr. 579); that "as a matter of fact, prolonged immobility in a particular position is apt to cause a chronic deformity of the particular joint" (Tr. 623); that "one ordinarily requests the patient to put the joint through the range of motion which does not elicit pain" (Tr. 624).

Dr. Wm. Dodd Robinson, for the Commission, admitted that salicylates could be considered, to a variable degree, an adequate treatment for stiffness of rheumatism and arthritis, the causes of which are unknown (Tr. 1091);
88 that salicylates will have an effect on the pains of gout (Tr. 1095); that "the use of salicylates under those circumstances may permit increased mobility due to relief of pain" (Tr. 1122); and that "in general mobility is certainly good" (Tr. 1122); that "motion is desirable to maintain muscle tone and to maintain nerve control, maintain muscle strength so that if and when the inflammatory processes subsides the functional condition of the joint will be preserved. These are additional theoretical reasons that apply in various types of arthritis * * *" (Tr. 1143, 1144).

Similarly, Dr. L. Maxwell Lockie testified that: "I feel that salicylates, through its action in the thymus, will make a person less conscious of the primary cause, and under those circumstances it may decrease the stiffness as a

symptom" (Tr. 1169); and that in mild cases of rheumatism and arthritis mobility is desirable (Tr. 1193).

Dr. Black testified that in "rheumatoid arthritis, and if there is some relief from pain by the administration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation" (Tr. 646); that "there is increase in mobility except where ankylosis has existed previously" (Tr. 646); that with respect to the removal of the cause in order to correct inflammatory pathological changes "you can't remove the cause because you don't know what it is, you don't
89 know what the cause of rheumatoid arthritis is"; however, that one can alleviate those inflammatory changes somewhat (Tr. 656).

It seems obvious, therefore, that Dr. Weisberg was correct when he testified that:

"Very frequently the doctor, particularly when he is confronted by a disease for which there is no known cure, is compelled to resort to what is known as symptomatic treatment. He offers medication which provides relief from the discomfort caused by the disorder and he hopes—fortunately most of the time he is right—that sooner or later the natural restorative processes will correct the underlying condition." (Tr. 634)

5. That nearly all physicians commonly prescribe and use salicylates as a treatment in the alleviation of the pains of rheumatism and arthritis. Salicylates will relieve those pains.

Factual and Legal Basis for Finding:

Since nearly every physician who testified at a hearing of this case stated that he commonly used and prescribed salicylates for the alleviation of the pain and suffering of rheumatism and arthritis, and that it was the commonly accepted treatment of all doctors in the field, it seems unnecessary here to repeat that testimony in detail.

Dr. Edward F. Rosenberg, for the Commission, stated that he prescribed salicylates (Tr. 241) during diagnosis (Tr. 549) and that they were the best possible relief of pain to the patient (Tr. 244) which he further testified that all the standard texts on rheumatism or rheumatic fever that are used mention the use of salicylates for
90 the relief of pain of rheumatism or arthritis (Tr. 261).

Dr. Barton, for the Commission, testified (Tr. 352) that he prescribes salicylates for the relief of pain of rheumatism and arthritis; that "it is an important thing to be relieved" (Tr. 339); that the use of narcotics are more dangerous than salicylates (Tr. 340).

Dr. Wolpaw stated (Tr. 532) that he prescribed salicylates for the relief of pain of rheumatism or arthritis.

On the part of respondents, Dr. Weisberg stated that in his treatment of those patients suffering from the various forms of rheumatism or arthritis, he prescribes and uses salicylates (Tr. 577); that through his experience in the various hospitals, and reading the literature, he is familiar with the general practice of physicians practicing internal medicine, in that behalf, and that they use salicylate therapy for the relief of pains and aches of rheumatism and arthritis. He testified:

"I believe I can state without hesitation that I have employed salicylates more widely than any other drugs, and it is my belief that all doctors practicing in the field would probably make the same statement." (Tr. 578); that when he prescribed or used salicylate therapy he would call it a treatment (Tr. 578); that salicylates enjoy the reputation of being an excellent analgesic and in his experience they deserve that reputation (Tr. 579).

Dr. Black testified that for most of the musculo-skeletal diseases he would say that the drugs most often used
91 by doctors are "salicylates in one form or another" (Tr. 644); that these are more universally and generally used and prescribed than any other medicine in the relief of pains and discomforts of rheumatism and arthritis (Tr. 645).

Dr. Laurence H. Mayers, for respondents, testified that "We always use salicylates" in the treatment of patients suffering from rheumatism and arthritis (Tr. 681); that he has no idea at all as to how or why or in what manner physiologically or therapeutically salicylates relieve pain (Tr. 687); Dr. Aaron Arkin, for respondents, likewise testified that he had prescribed salicylates "in patients with arthritis, especially in cases of acute rheumatic fever," and "because we know we have no other, no better form of therapy." (Tr. 711)

Dr. Robinson, the Commission's witness, likewise testified that he used salicylate therapy and prescribed salicylates frequently in a majority of the cases of rheumatism

and arthritis (Tr. 1109); that nearly all doctors use salicylate therapy in such conditions (Tr. 1118); and Dr. Lockie also stated that:

"I usually tell a patient that if medication is desirable for relief of symptoms that salicylates in my mind are by far the best for them to use. I feel that it centrally lessens the consciousness of pains around joints, of discomfort around the joints. It makes them able to do things which in a mild and moderate case they may not have been able to do as well"

and "that is desirable" (Tr. 1192).

92 6. The amount of salicylates present in "Imdrin" would provide relief from pain and suffering in the cases of the majority of all persons afflicted with rheumatism or arthritis.

Factual and Legal Basis for Finding:

Since certain witnesses for the Commission have seen fit to question the efficacy of the product "Imdrin" as a palliative in the relief of symptomatic pains of rheumatism and arthritis, suggesting that the dosage of these admittedly beneficial drugs is insufficient for the purposes indicated, respondents take this means of pointing out to the Trial Examiner the pertinent testimony on that point.

Dr. Weisberg testifying for respondents said, in answer to the question "In what doses do you prescribe salicylates for the relief of pain in arthritis and rheumatism?", "The smallest dose which produces the desired result." And when asked "What is your experience along that line?", he replied: "It can range from an occasional five grain dose up to sixty to ninety grains a day" (Tr. 628). This witness further testified with respect to the salicylate content in "Imdrin" that "Well in probability it would provide relief for a majority of patients, and I am considering all arthritic patients taken as a group when I say that" (Tr. 636, 637).

Dr. Black, in like manner, testified that in the majority of ambulant cases that suffer from the pains, aches and discomforts of rheumatism and arthritis "some individ-

93 uals need to take five grains of aspirin at irregular intervals, and I have given as much as eighty to one hundred and twenty grains of sodium salicylate a day" (Tr. 647); and with reference to a similar content of "Imdrin", Dr. Black testified that "I think that twenty grains of salicylates a day would be somewhat helpful"

(Tr. 664); also: "I would say that they obtain some help from that. I wouldn't say that it is completely relieved, but I would say that they would obtain some help from that" (Tr. 671).

Dr. Laurence Mayers who, the Trial Examiner will recall, had treated over 100,000 cases of rheumatism and arthritis, the second largest number of any physician in the country, and who was an intimate of Drs. Hench and Judd of the Mayo Foundation, having also attended their wives and families, testified that before the advent of salicylates in tablet form doctors commonly prescribed four hundred to six hundred grains of aspirin a day in liquid form (Tr. 685), but that it was now recognized as true that a massive dose of salicylates, ninety to one hundred grains, would not be any more effective in relieving pain than one of twenty-five to thirty-five grains (Tr. 688), since physicians "found out that there was only 25 to 35 grains that can be absorbed, * * * the rest of it passes out unchanged." (Tr. 686) That the administration of twenty grains of salicylates per day for the relief of pains and discomfort of rheumatism and arthritis is the most common dose, and that it will relieve the pains and discomfort accom-

94 panying those diseases. (Tr. 686)

7. That pain is completely subjective and is incapable of definition and classification as to degree of pain suffered.

Factual and Legal Basis for the Finding:

All of the physicians who testified in the hearings in this case were unanimous in their statements that pain is completely subjective. The only differences were in the language used by each to say so.

On cross-examination, Dr. Rosenberg, the Commission's witness, testified as follows (Tr. 241):

"Q. As a matter of fact, pain is subjective as you get it from the patient, is it not?

A. Yes, that is correct.

Q. And it is a matter of the judgment of the patient, also?

A. Yes, and of the physician, the physician's judgment of the patient's remarks.

Q. That is right, and the remarks come from the patient?

A. Yes, that is correct."

With respect to the degrees of pain, Dr. Rosenberg testified (Tr. 240):

"Q. Doctor, you have talked about varying degrees of pain. What degrees of pain are there—will you kindly tell us—in those suffering from the various types of rheumatism or arthritis?

A. Well, we have no specific answer to that question. The best we can do is to refer to them as mild, moderate, severe and so forth.

Q. Is there a standard nomenclature for the degrees
95 of pain in those conditions that you know of?

A. Oh, I wouldn't say so, not that I know of, no. It is a matter of judgment how one shall designate the severity of the pain. I would say it is a matter of the judgment of the patient or the physician."

Likewise, Dr. Barton, the Commission's witness, after attempting to describe some rare experimental machine for objectively measuring pain, was forced to admit (Tr. 345):

"Q. In the last analysis, your pain is one of a subjective nature that the patient tells you about, is it not?

A. It is very helpful to have a patient tell one."

Dr. Barton further testified that "Some people can bear pain better than others" (Tr. 348) and that there aren't any clear lines of demarcation between mild and moderate pain; that "one would have a base line in each case to draw a demarcation. It isn't a blanket term that you can apply to everybody" (Tr. 348).

On his part, Dr. Wolpaw, another Commission witness, testified (Tr. 534):

"Pain in an individual will vary. For example, you might have a headache and not pay any attention to it, and the same headache in me will be putting me in bed, * * * but, it is still a subjective thing, as you say; you are actually right."

Dr. Weisberg, testified on the subject of the pains of rheumatism and arthritis as follows (Tr. 579, and 580):

"Q. Doctor, do you know of any definite or accepted standard for measuring the subjective aspect of pain?

A. To the best of my knowledge there is no objective means for determining the severity of pain."

96 Again, respondents' witness, Dr. Black, testified (Tr. 647):

"Q. Doctor, when you interview or examine a patient that is suffering from rheumatism or arthritis, do you know of any definite standard whereby you can measure the pain that that patient is suffering?

A. No, I think pain is purely a subjective thing and it has to be evaluated from that standpoint."

And Dr. Mayers, for respondents, testified (Tr. 686 and 687):

"Q. Doctor, in treating rheumatism or arthritis the degree of pain is usually subjective, that is, what the patient tells you, is it not?

A. I didn't understand.

Q. The degree of pain that a patient suffers is subjective, is it not, doctor?

A. Yes.

Q. There is no standard method of measuring pain that any patient suffers?

A. No."

In view of this unanimity of viewpoint on the subject among the medical experts, it would seem that there is little doubt but that pain is a completely subjective thing and incapable of definite classification as to degree.

8. That most cases of rheumatism and arthritis are ambulatory and mild.

97 Factual and Legal Basis for the Finding:

Of the Commission's medical experts, Dr. Rosenberg testified (Tr. 238) that the majority of rheumatic or arthritic patients that come to Michael Reese Hospital and to Mt. Sinai Hospital, with which he is connected, are ambulant and that from his own knowledge the majority of patients in the United States that are suffering from rheumatism or arthritis are "certainly ambulant" (Tr. 240).

Dr. Black testified on this point (Tr. 647)

"Q. Will you tell us, Doctor, whether or not the majority of those suffering from rheumatism and arthritis are ambulatory patients as compared to those that are bedridden?

A. I would say that the majority are ambulants.

Q. By that is meant that they walk around, is that right?

A. Yes, of course."

Dr. Black further testified that the most common form of rheumatism and arthritis, in his experience, is fibrositis; the next most common form is osteoarthritis (Tr. 654); that fibrositis, if it is classified as a form of arthritis, would be the most common form of arthritis (Tr. 663) and hypertropic arthritis next most common (Tr. 663); that

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people suffering from these two categories probably do not ordinarily or normally seek or procure medical treatment (Tr. 663). When asked (Tr. 663):

"Q. Now, Doctor, from your experience, what would be the means by which people in that group who are
98 not seeking medical treatment would take for self-medication?"

he replied (Tr. 664):

"A. Well, they usually treat themselves with the ordinary home remedies consisting primarily of heat and aspirin.

Q. Would you include generally the salicylates?

A. Yes, I would."

Similarly, Dr. Mayers, for respondents, testified (Tr. 706):

"Q. Doctor, will you tell us whether or not you know if there are a number of people that suffer with the pains and discomforts of rheumatism and arthritis that never go and see (doctors) or have medical care, if you know?

A. Well, the doctors think a comparatively small percentage go to doctors because about the time the patient gets ready to go to the doctor the pain they have disappears."

Dr. Robinson, the Commission's witness, testified as follows from his experience (Tr. 1142):

"Q. Doctor, is it not a fact that in an overwhelmingly large number of cases of rheumatism and arthritis, these cases are for want of a better word, ambulatory or not too severe?

A. Are you speaking of—

Q. How would you characterize it? I think you know what I am groping for.

A. All patients in the rheumatic disease group?

Q. Most of them are ambulatory, are they not?

A. The majority of them are ambulatory.

Q. And not too severely affected?

99 A. It all depends on what you mean by severity, because there are certain forms that may be mild at times and may be very severe at other times. But certainly the larger portion of these patients are able to be up and around. Many of them do carry on their duties and household activities with a greater or less degree of discomfort."

Even Dr. Lockie, testifying for the Government on rebuttal, stated (Tr. 1195) that "now by far most of the people I see (afflicted with rheumatism or arthritis) are ambulatory" and that of the patients suffering from those diseases, he sees the worst of them; "I see the problems." Dr. Lockie further testified that only approximately 8% of those persons afflicted with rheumatism or arthritis fall into class 4, the totally incapacitated class under the attempted classification of the American Rheumatism Society; that 92% fell into the remaining classes (Tr. 1207). And Dr. Wolpaw likewise testified that only 10% of the seven and a half million persons estimated to be afflicted with rheumatism or arthritis could be classified as cripples (Tr. 516 and 526).

100 9. That the use of "Imdrin" as directed has relieved and will relieve the pains, suffering, inflammation, stiffness and redness of persons afflicted with rheumatism and arthritis and has enabled them to resume their normal living.

Factual and Legal Basis for Finding:

More impressive than any theory advanced by the Commission's medical witnesses, none of whom had ever used or prescribed "Imdrin", as to its efficacy in alleviating the pains and other symptoms of rheumatism and arthritis, is the testimony in the record of the actual experiences of fourteen live users of the product (Tr. 761 to 823, 844 to 867, 868 to 946 and 987 to 1021). Each of these disinterested persons testified enthusiastically to the excellent results he or she had experienced from his or her use of "Imdrin".

These sufferers from rheumatism and arthritis included Peter J. Maretta, Mrs. Rhoda Lipsie, Mrs. Ida Klaus, Mrs. Ingeborg Larsen, King Hayes, Arthur Fremault, Louis Jacobs, E. H. Carr, Olive Mae Carr, Katherine Gott, Bernard Vinissky, Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield.

Each was examined by a physician who diagnosed his or her ailment as some form of rheumatism or arthritis (Tr. 823 to 844), (Tr. 946 to 985) and (Tr. 1021 to 1070), or it was stipulated by counsel that such was the case (Tr. 871, 923 and 1068). It was stipulated that Louis Jacobs of Cleveland, Ohio who testified in this cause had been a patient of Dr. Wolpaw who had previously testified for the Commission, and that Dr. Wolpaw had diagnosed

Mr. Jacobs' case as gouty arthritis (Tr. 871); similarly, it was agreed by counsel that Bernard Vinissky of Chicago, Illinois had been a patient of Dr. Rosenberg, a Commission witness, and that Dr. Rosenberg had diagnosed
101 Mr. Vinissky's condition as gouty arthritis (Tr. 923).

Dr. Edward B. Miller of New York, appearing for respondents, testified that he had examined Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield (Tr. 1025). He found Mrs. Marchena to have a condition "which we call a degenerative arthritis" or "osteoarthritis" (Tr. 1031); that Mrs. Raaberg "represents the same disease" but "a little more advanced form" (Tr. 1039); that as to Mr. Greenfield, he had bursitis (Tr. 1045) and neuritis (Tr. 1047). Since counsel for the Commission has seen fit to question the adequacy of certain diagnoses made by respondents' witness Dr. Weisberg, as will hereinafter appear, to the extent of holding two hearings designed to adduce rebuttal evidence with respect thereto, and has wholly failed on such occasions to attack the adequacy of Dr. Miller's diagnoses, it is to be assumed that Counsel is either satisfied with those diagnoses or recognizes his inability to discredit Dr. Miller in that behalf.

The balance of the sufferers from rheumatism or arthritis who testified for respondents were first examined by Dr. Weisberg, who diagnosed the case of each. Dr. Weisberg testified that Peter Maretta had muscular rheumatism or fibrositis (Tr. 826); that Rhoda Lipsie had hypertrophic arthritis (Tr. 827); that Mrs. Ida Klaus had hypertrophic arthritis (Tr. 829); that Mrs. Ingeborg Larsen was afflicted with hypertrophic arthritis, similar to the preceding case (Tr. 830 and 831); that King Hayes presented a case of gout (Tr. 833); that he was satisfied that every one of those persons had some form of arthritis (Tr. 838); that Arthur Fremault suffered from hypertrophic arth-
102 ritis (Tr. 839); the doctor's diagnosis of the condition of E. H. Carr was that Mr. Carr had hypertrophic arthritis, subdeltoid bursitis or both (Tr. 948); that Olive Mae Carr "was suffering from fibrositis or muscular rheumatism" (Tr. 952); as to Katherine Gott, Dr. Weisberg testified "My diagnosis was arthritis, type undetermined" (Tr. 954). Dr. Weisberg testified that in each instance he made his diagnosis on the basis of the facts apparent in the case of the particular patient involved;

that he took into consideration not only the history of the case as related to him by the patient, but such definitely objective findings as crepitus, the presence of Heberden's nodes which are present only in arthritis (Tr. 841 and 842) and the like; that these could be found without x-ray (Tr. 841).

On rebuttal, Dr. Robinson, the Commission's witness, after describing his own practice in diagnosing the cases of patients presumed to be suffering from rheumatism or arthritis with a view to attempting treatment of those patients rather than as preparation for testifying in a lawsuit, was forced to admit that Dr. Weisberg, as an accredited diplomate in internal medicine was qualified to make adequate diagnoses of rheumatism and arthritis, that the diagnoses Dr. Weisberg made might be right, and that if they were correct, it wouldn't just be the result of an accident. When asked by counsel for respondents: (Tr. 1129)

"Q. Do I understand you to say that Dr. Weisberg might have been right (in his diagnoses) in some of these cases? Is that what you are saying, in effect?"

Doctor Robinson answered:

"A. It is entirely possible that he was right in some of these cases."

"Q. And that it wouldn't be just an accident if he were right?"

"A. Of course not."

103 Again, Dr. Robinson, after being reminded that Dr. Weisberg, like himself, was a diplomate in internal medicine, and asked whether an applicant for such recognition is not required to demonstrate to the Board evidence of his proficiency in diagnostic techniques and (Tr. 1132)

"Q. Do I understand you to suggest that one might become a Diplomate without certain recognized abilities in the art of diagnosis?" responded

"A. No. I don't want to indicate that."

Doctor Robinson further stated (Tr. 1132):

"A. I do not think he (Dr. Weisberg) is wrong in nine cases, obviously. However, I think it depends very much on what you mean by diagnosis, sir."

Doctor Robinson then sought to distinguish between what he called a "clinical impression" and a "diagnosis" and testified further as follows (Tr. 1134):

"Q. Am I correct in stating then that you called some-

thing you described an adequate diagnosis and something else an impression gained by a doctor? That is you defined one thing as an adequate diagnosis and another which you called a doctor's impression.

"A. A clinical impression.

"Q. Is it not a fact that the line of demarcation between various diagnoses and so-called impressions is a hazy one at best, a very nebulous one?

"A. Unfortunately there are fields of medicine where one cannot go much farther than what we call a clinical impression * * *"

"Q. Would you call what you have just described as an impression, a guess? Is that the same thing to your mind?

"A. No."

This impresses respondents as unwarranted hair-splitting. Moreover, Dr. Robinson, when asked if he ever made less than a complete diagnosis of a patient, replied (Tr. 1136 and 1137):

"Regarding the without going through the complete diagnostic procedure, there are occasional exceptions. 1104 For instance, where you have a single finding which may be pathognomic—I mean it occurs in that disease and no other disease—of course, if you find that and make a diagnosis without going through the detailed procedure—(presumably such would be considered adequate diagnosis)."

It should be remembered that Dr. Weisberg had testified to having found such characteristic evidence of arthritis as Heberden's nodes in various of the patients he examined, a condition which does not exist in connection with any other disease. Such would seem, therefore, to fulfill the requirement of Dr. Robinson's exception hereinabove stated. Further, Dr. Weisberg testified (Tr. 957 and 958):

"You mentioned that it was a brief examination. I'd like to point out that that doesn't necessarily make it inadequate, not by a great deal, and there were a number of instances when I mentioned quite emphatically that it was my belief that individuals had hypertrophic arthritis. In those cases I feel very strongly that further evidence, the sort adduced by x-rays, would add nothing to the diagnosis. The clinical evidence was so clear-cut that in my mind there would be no doubt whatsoever regarding the nature of the disorder and it is my very distinct impression that the neophyte in the practice of medicine would have been compelled to make a similar diagnosis."

With respect to the particular individuals examined by Dr. Weisberg, he testified that while x-rays, sedimentation rate and urinalysis would be additional evidence, none of these would be necessary to establish a diagnosis in those particular cases (Tr. 959).

It seems unnecessary here to detail the testimony of the various users of "Imdrin". Many of them had previously taken aspirin, Anacin or other drugs without effect, then took "Imdrin" and experienced relief from the pains of rheumatism or arthritis, reduction of swelling, stiffness and redness and were able to move about in their daily routines in a manner before that time impossible.

105 Louis Jacobs of Cleveland, Ohio, the former patient of Dr. Wolpaw, testified that he took "Imdrin" and further (Tr. 879):

"Q. Did it help you in any way?

"A. Certainly.

"Q. How?

"A. I had no pain and I could walk. I could go places. I came to Chicago, sit, and take the Imdrin away and I won't come to Chicago." Further (Tr. 880):

"A. I told him (Dr. Wolpaw) Imdrin helped me and that it is wonderful."

He testified that aspirin made him sick (Tr. 882).

E. H. Carr testified that he took aspirin before he tried Imdrin, but the aspirin didn't seem to help him (Tr. 903); however, "Imdrin" just relieved me of that excruciating pain. He testified (Tr. 904):

"A. I couldn't raise my arm from the side. My wife had to help me with my coat.

"Q. Was that before you took Imdrin?

"A. Before.

"Q. After you took Imdrin?

"A. Well, it constantly got better and better until I don't have any effect at all.

"Q. What effect did it have in the area of your left thumb on your left hand?

"A. It disappeared entirely."

On cross-examination by counsel for the Commission, Mr. Carr further stated (Tr. 906):

"Q. And you got relief from pain, swelling and stiffness?

"A. Oh, yes, very much so."

Olive Mae Carr testified that she had taken aspirin for the pains all over the left side of her body "from the
106 ear all the way down on this arm" (Tr. 908 and 909) with no results, but that after taking "Imdrin" the results were "just wonderful." She testified, in part, as follows (Tr. 909):

"Q. Did you have, before you took Imdrin, did you have full mobility, could you move your arm around and your shoulder?

"A. Yes.

"Q. You could?

"A. But it hurt?

"Q. It hurt?

"A. It did.

"Q. After you took Imdrin the pain was eliminated?

"A. It was wonderful.

"Q. Did that happen immediately or over a period of time?

"A. Well, the first week it started to lessen and lessen, and now I don't have it at all."

Mrs. Katherine Gott testified that "I took aspirin, anacin, and stuff like that, but they never did any good (for her pains of rheumatism or arthritis)" (Tr. 915). Regarding her use of "Imdrin" she testified (Tr. 916) "It has helped me wonderfully." She particularized:

"Before I started taking it my hands were swollen up and I couldn't even bend my fingers down like that. They'd be swollen so badly I couldn't make a fist out of my hand. * * * Now (after taking "Imdrin") I can bend my hands and fingers" and make a first (Tr. 916).

She further testified that "the pain has lessened a lot." (Tr. 916).

Bernard Vinissky testified that he had doctored at the Mayo Foundation for many years and had been a patient of Dr. Rosenberg, the Commission's witness; that he had been subjected to much salicylate therapy for his gouty arthritis. Mr. Vinissky was asked how he felt after changing from aspirin and taking "Imdrin". He responded (Tr. 939): "The particular pain that impelled me to buy it had disappeared." He further testified "I
107 felt better after taking Imdrin than taking aspirin and with taking a smaller number of Imdrin pills than I was required to take of aspirin." (Tr. 941).

Peter J. Maretta, a user, was similarly asked (Tr. 763):

"Q. Did you take anything for the pain?

"A. Imdrin."

Further, he related (Tr. 763):

"Well, I took three pills for the one day and it eased up my pain. Not only that but when I went to bed it made me sleep better at night and I kept on taking them until the pain eased up and when I finished mostly all the bottle I didn't have any more pain. I don't have any more pain. I don't ever have any now * * * (the pain) hasn't come back at all."

Mrs. Rhoda Lipsie testified that she was bothered with a pain in her left hand (Tr. 776); that she took "Imdrin" until she had finished two bottles, at the rate of four tablets a day (Tr. 777). She answered questions of respondent's counsel as follows (Tr. 777):

"Q. Will you tell us what effect, if any, it had upon the pain?

"Well, it left me. The pain left completely.

"Q. Will you tell us when the pain was completely eliminated?

"A. I ran out of them and I thought I would wait, say, about three or four weeks before I would get more and I noticed I didn't have any pain and so I didn't buy any more for awhile.

"Q. Did you buy some more later?

"A. Yes, I did but I didn't use them four a day. I only took two a day.

"Q. How long did the pain last after you bought your further supply?

"A. Probably,—well shall we say just a couple of months?

"Q. When, specifically, would you say that your pain was completely eliminated?

"A. Six months ago."

On cross-examination, Mrs. Lipsie was asked by counsel supporting the complaint (Tr. 784):

108 "Q. When did that stiffness in the end joints of the forefinger and the little finger come, when did they come?

"A. At the beginning, it started right away, but it let up. When I took the pills (Imdrin), then it stopped. I felt now I could bend my fingers where before I couldn't."

Similarly, Mrs. Ida Klaus testified (Tr. 793):

"A. I came home and I seemed to be getting worse, it was pain, pain, pain my leg got numb all the way down to my ankle, I couldn't walk and that is the way I was suffering and suffering, that is all, and I took shots and pills and got no better.

"Q. What was it that you took in November?

"A. Your pills.

"Q. Imdrin?

"A. Yes.

"Q. And how did the pills affect your pain?

"A. It took it away.

On cross-examination, Mrs. Klaus was asked by the attorney for the Commission (Tr. 802):

"Have you ever taken any aspirin for this condition of yours? and she answered:

"Oh, yes, when I had that awful pain I used to take it. I would take a tablet or two and it wouldn't help me." and "I took quite a few."

Mrs. Ingeborg Larsen testified (Tr. 809) that a friend gave her "Imdrin" and she tried it and it seemed to relieve the pain in her knees (Tr. 807). It is especially noteworthy that this witness, in her testimony, volunteered spontaneously that (Tr. 810):

"A. It gave me relief.

"Q. It gave you relief?

"A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure."

109 King Hayes, another user, testified for respondents (Tr. 848):

"Q. Before you used Imdrin did you have pain in your feet?

"A. Before I used it?

"Q. Yes.

"A. Sure I would have pain in my feet.

"Q. What did it do with regard to the pain, if anything?

"A. It took the pain and swelling out.

"Q. Then you went back to work? (Tr. 849)

"A. Yes.

"Q. During this time (before taking Imdrin) you had been unable to work, is that right?

"A. Oh, sure."

Arthur Fremault testified for respondents that he had had pains in the lower back, the full lower back (Tr. 856); that after taking Imdrin, he had said (Tr. 858):

"'Its wonderful. You are advertising your medicine. It is wonderful. I have got no pain any more.' Yes, it is gone."

Marjorie Johnson Marchena, for respondents, said (Tr. 987): "I had muscular pains in my body. * * * In my shoulders, in my arms, hands and my lower limbs." She testified that neither a liquid medicine nor capsules prescribed by her physician provided any relief (Tr. 988). She further testified that about a week after she commenced taking "Imdrin", six a day, she noticed that her pains were diminished (Tr. 990); that she used six tablets a day for about three weeks "To the time that I really felt relief and found out the swelling from my limbs were disappearing. The swelling was in the feet and knees and also the hands (Tr. 991). She stated (Tr. 992) that "My pains were all gone. And the swelling; yes." She did not move from her basement apartment until 1950, but her pains
110 were relieved and her swelling reduced three weeks after she commenced taking "Imdrin" (Tr. 995) about March, 1949 (Tr. 993). She testified that she had previously taken Dolcin and Anacin without effect; that she was an ordained Methodist minister (Tr. 1003).

Mrs. Betty Raaberg testified that "I couldn't go down the stairs and bend the knee here" * * * "I had such terrible pains. (Tr. 1005); that "While I lie in my bed before I took the Imdrin, I couldn't have any blankets to touch my knee (Tr. 1006) but that "Then before supper I took two ("Imdrin") again, and that was the first night for a long time I could have the blankets—" (Tr. 1006). She said that she used the blanket without pain "even the first night." She was then asked:

"Q. How long after that first day that you used Imdrin were you able to get downstairs where you previously were unable to?" and she answered

"A. I would say two days."

She testified further that she had tried aspirin. "They don't help me" (Tr. 1008)

As to Robert S. Greenfield, the last user witness scheduled to testify in the New York hearings, it was stipulated by counsel that if called, Mr. Greenfield would testify stat-

ing the history which he gave to Dr. Miller who examined him and which Dr. Miller had previously testified to in these hearings, including Mr. Greenfield's aches and pains and conditions, the time and manner and use of "Imdrin" and the description of his condition thereafter (Tr. 1068). Regarding the testimony so incorporated in the record, Dr. Miller had testified that Mr. Greenfield had a pain in his left knee in 1947; that he couldn't go to the movies, drive his car or sit anywhere for any length of time; that a year and a half after the onset of the pain, he took Imdrin as directed and in 48 hours had relief, slept 111 through the night after taking the medication for two days, and that his relief was complete after he had taken 100 tablets (Tr. 1040, 1041 and 1042); that three to-four months ago, he developed left shoulder pain which a physician diagnosed as bursitis; that two months later he started Imdrin and after a few days of taking the drug, he was much improved (Tr. 1043). Dr. Miller's diagnoses of bursitis and neuritis have already been mentioned on page 21 of these proposed findings.

In the light of these dramatic manifestations of the effects of "Imdrin" upon the pain, suffering, stiffness, swelling and other symptoms of numerous persons afflicted with various forms of rheumatism and arthritis, it seems reasonable to conclude that the product will do that for which it is held out to the public, a meritorious and different product designed and represented as capable of producing symptomatic relief for sufferers of diseases most distressing to mankind. It is requested that an order herein be framed accordingly.

Respectfully submitted,
Frank E. Gettleman,
James Goding,
Arthur Gettleman,
Edward Brodkey,
Attorneys for Respondents.

Chicago, Illinois,
December 1, 1951.

112A UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

ORDER CLOSING PROCEEDINGS BEFORE HEARING EXAMINER.

(Received Jan. 4, 1952, Secretary.)

It Is Ordered that all proceedings herein before the hearing examiner be, and the same hereby are, closed as of this 4th day of January, 1952.

Abner E. Lipscomb,
Hearing Examiner.

January 4, 1952.

112B UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

RULINGS ON PROPOSED FINDINGS AS TO THE FACTS AND CONCLUSIONS.

(Received Jan. 11, 1952, Secretary.)

Proposed Findings and Conclusions of Counsel in Support of the Complaint:

First:	Adopted.
Second:	Adopted.
Third:	Adopted in substance.
Fourth:	Adopted in substance.
Fifth:	Adopted in substance.
Sixth:	Adopted in substance.
Seventh:	Adopted in substance.
Eighth:	Adopted in substance.
Ninth:	Adopted in substance.
Tenth:	Adopted in substance.
Eleventh:	Adopted in substance.
Twelfth:	Adopted in substance.
Thirteenth:	Adopted in substance.
Fourteenth:	Adopted in substance.
Fifteenth:	Adopted in substance.
Conclusion:	Adopted in substance.

Proposed Findings and Conclusion of Counsel for the Respondents:

1. Adopted in substance.
2. Rejected as contrary to the implications inherent in respondents' advertisements.
3. Adopted in substance.

113 4. Adopted in part and rejected in part as contrary to the greater weight of the evidence.

5. Adopted in substance.
6. Rejected as contrary to the greater weight of the evidence.
7. Rejected as immaterial in part and contrary in part to the greater weight of the evidence.
8. Rejected as indeterminable and immaterial to the issues herein.
9. Rejected as contrary to the greater weight of the evidence.

Conclusion contained in the last paragraph on page 31 of respondents' proposed findings:

Rejected as contrary to the greater weight of the evidence.

Abner E. Lipscomb,
Hearing Examiner.

January 11, 1952.

114 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

INITIAL DECISION.

By Abner E. Lipscomb, Hearing Examiner.

(Received Jan. 11, 1952, Secretary.)

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1949, issued and subsequently served its complaint in this proceeding upon respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts

and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

Findings as to the Facts.

Paragraph One: Respondent Rhodes Pharmacal Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1814 East 40th Street, Cleveland, Ohio.

115 Respondents J. Sanford Rose and Jerome H. Rose, individuals, are now and at all times mentioned herein have been, respectively, the president, and the vice president and treasurer, of said corporate respondent, Rhodes Pharmacal Company, Inc., with their offices located at the principal place of business thereof, and are now, and at all times mentioned herein have been, in control of the management, policies, and operation of the said corporate respondent, including the acts, practices and methods herein found.

Paragraph Two: The respondents are now, and for several years last past have been, engaged in the manufacture, sale and distribution in commerce, among and between the various states of the United States and in the District of Columbia, of a certain medicinal preparation designated "Imdrin", which is a "drug" within the meaning of the Federal Trade Commission Act, and for which the formula and directions for use are as follows:

Formula:

Each tablet contains:

Acetylsalicylic acid	1.9 grains
Manganese salicylate	1.5 grains
Calcium succinate (anhydrous)	2.3 grains
Caffeine	.16 grains
Thiamine chloride	1 mg.

Directions:

Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other states of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various states of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Paragraph Three: In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination, by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission 116 Act, of certain advertisements of the drug preparation "Imdrin", for the purpose of inducing, and which were likely to induce, its purchase. Among such advertisements were radio broadcasts disseminated subsequent to September 1, 1948, by various broadcasting stations, and advertisements published subsequent to September 1, 1948, in various newspapers circulated throughout the United States. Typical of such advertisements are the following:

"Amazing New Discovery For Rheumatism, Arthritis
No Faster Arthritic Pain Relief Known
Safe . . . Hospital Tested
Stops Swelling . Uncorks Joints . Contains
Sensational New Research Discovery

Picturization of
hand containing
tablet

New, Safe, Scientific Tablet
Not a Narcotic . . . Not Habit Forming . . .

At Last The Story Can Be Told! Science has turned its attention to relieving the agonizing pains of rheumatism and arthritis. The result of extensive research is the remarkable preparation Imdrin. Longtime sufferers from rheumatism, arthritis, neuritis and gout may find Imdrin gives glorious relief amazingly fast. Contains no dope or harmful drugs. Ask for Imdrin at drug stores.

Picturization of
scientist examining
test tubes

Developed after 3 Years of Extensive Tests in Hospital Clinics

Imdrin has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that Imdrin works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, etc., should investigate this new development of modern medicine. Ask for Imdrin at drug stores.

117

Relieves Pain and Suffering After 20 Years of Torture!

•Picturization of man
in wheel-chair

'I call Imdrin a miracle and you can understand why when I tell you that the pain which had tortured and crippled me was gone after I had taken Imdrin. Now, for the first time in years, I can move about without pain and enjoy life once again. Surely the thousands of unfortunates like me should be happy to learn about the blessed, fast-acting Imdrin.'

A. C., Chicago, Ill.

•Picturization of old
woman invalid

'I had arthritis and rheumatism so bad I could hardly get around. In fact, I went to several doctors who told me that my case was hopeless and that they could do nothing for me. Well, I had about given up hope when I saw your ad in the paper and bought a bottle of Imdrin. I really think it's a wonder. I feel better with every dose I take. It seems like a dream to be free of so much pain.' Mrs. A. R. Webb, 311 N. Bryan St., Amarillo, Texas.

*Picturization of woman apparently suffering

'Even though my daughter is a registered nurse she could not find anything to help her agonizing arthritic pains. She tried everything but nothing did her any good. Then she bought Imdrin and she has had miraculous results. I am going to tell all my friends about the wonderful relief from Imdrin. It really is an amazing remedy.'
Mrs. C. C., Kunkletown, Pa.

*Posed by professional models.

Picturization of anatomical chart with arrows showing location of joints and muscles

Where Rheumatism Strikes . . .
And How to Detect It!

Rheumatic and arthritic pain and inflammation strikes any of the indicated areas. (See chart above.) But these diseases have many forms and symptoms.

118 All forms of arthritis and rheumatism are accompanied by pain, very often swelling and loss of function of the joints. Hospital test patients receiving Imdrin were able to resume more happy active living once the pain subsided and their confidence grew. Imdrin reduced joint swelling and eased pain rapidly. Imdrin is your greatest hope. Imdrin may give you the same blessed results. Get Imdrin today!

How Imdrin Helps You!

If you have suffered the tortures of rheumatic or arthritic pains, swelling and stiffness . . . if you get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year . . . listen! Imdrin may answer your problem of comfortable living. In case after case Imdrin has proved its potency. Imdrin is one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement . . .

and back it up with proven hospital and clinical records. Amazing new Imdrin brings new hope of a better life for you . . . and it is as close to you right now as your nearest drug s[illegible]. Get Imdrin today. Use only as directed. If you don't agree that amazing new, scientific Imdrin is the greatest blessing you've ever discovered, return for your money back. Get Imdrin today—resume comfortable living tonight!

Today—Resume Confident, Pain-Free Living With Amazing New, Safe, and Scientific . . .

Imdrin contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using Imdrin today. Don't miss the chance to enjoy living once again."

(Picture and one additional testimonial omitted.)

Imdrin
No Faster Arthritic Pain Relief or money back

Picturization of bottle of Imdrin

Mail this convenient mail order coupon

Coupon

119 "Imdrin is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis. . . .

"For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect. . . .

"Imdrin is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica, and neuritis. To back up its claims, the distributors of Imdrin stand ready to return your money if you do not get the relief you desire. All druggists have Imdrin. Ask for it Today."

Paragraph Four: In the first line of the first above-quoted advertisement, respondents represent the drug preparation "Imdrin" to be an "Amazing New Discovery For Rheumatism, Arthritis", which will "Stop Swelling. Uncork Joints". From the quoted statements considered separately, and from the quoted statements considered in the light of the entire advertisement, it may reasonably be inferred that the preparation "Imdrin" is a newly discovered drug or substance effective in the treatment of rheumatic and arthritic conditions. To represent that such preparation "stops swelling" and "uncorks joints" is to represent that it possesses therapeutic properties curative of such conditions. Furthermore, the picturization of the anatomical chart, accompanied by the statement, "Where Rheumatism Strikes And How To Detect It", logically warrants the inference that the drug preparation "Imdrin" is offered as a treatment for rheumatic and arthritic conditions.

Although the various advertisements carry such statements as "No faster arthritic pain relief known", "Relief of nagging aches, pains, swelling, and stiffness accompanying arthritic and related illnesses", "One of the fastest arthritis and rheumatic pain relievers known to medical science", and "It is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica and neuritis", such
120 statements, and others similar thereto relating to the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug preparation "Imdrin" is offered only as an analgesic and antipyretic. The offering of said product as a "scientific remedy" implies that its use may effect cures. As used by respondents in their advertisements, the word "remedy" is not sufficiently qualified by any accompanying statement to modify or limit this significance of "cure".

The representation that ", . . . Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again. No other medication for rheumatism and arthritis can make this amazing statement . . . and back it up with proven hospital and clinical records" clearly implies that such

statement may truthfully be made with regard to the drug preparation "Imdrin", and, accordingly, that said preparation is an effective medication for rheumatic and arthritic conditions.

It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin", when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions;

2. That the drug preparation "Imdrin", when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations;

121 5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

Paragraph Five: The term "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The term "neuritis" means inflammation of a nerve, which may be attended by pain, paralysis and degeneration of the nerve substance. This condition is produced by many causes, such as localized infection, creating toxic

substances in the system; toxic acidity from the use of various drugs; deprivation of certain chemical substances or vitamins; metabolic disturbances connected with diabetes; and infection of a nerve by various germs, such as that which causes syphilis.

"Sciatica" is an ailment which is manifested by pain along the course of the sciatica nerve, and is one form of neuritis. It also results from various causes, such as pressure exerted on the nerve or its roots by a tumor or neoplasm or an over-growth of bone; irritation or inflammation of the sheath of the sciatica nerve; and many other causes.

The term "neuralgia" refers to a syndrome of pain, or violent spasms of pain, which occur along the course of various nerves.

"Gout" is a disease connected with a disturbance of the metabolic functions of the body, involving the absorption of uric acid, which may result in pathological changes in joints, bones, cartilages, and a number of internal organs, particularly the kidneys, which may be utterly destroyed thereby. In its early stages the predominant symptoms of gout are recurring attacks of pain and swelling in the joints. Gout may cause deposits of crytalline material, with surrounding inflammation in joints, resulting in the destruction of their function.

"Fibrositis" is a general term referring to an inflammation of the fibrous tissue of the body, arising from unknown causes, and manifested by symptoms of aching and stiffness about joints or in various muscle groups. It may result in sciatica.

The term "bursitis" refers to inflammation of a bursa, which is a sac, generally adjacent to a joint or a bony prominence of the body, containing fluid, the purpose 122 of which is to act as a shock-absorber to provide for free movement of bones and joints. There are many types of bursitis, arising from known as well as unknown causes, such as gouty, tubercular, and gonorrheal bursitis.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints, and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some

instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

The term "osteoarthritis" refers to one of the chronic forms of joint diseases which has the pathological characteristic of a wearing away of cartilages and the production of excess bone at the margins of joints, which manifests itself as a painful stiffness, creaking of joints, and sometimes loss of motion. Osteoarthritis may result from externally-caused injury, or from unknown causes.

The term "infectious arthritis" refers to a form of arthritis caused by invasion of the joint by a germ.

Paragraph Six: The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;
2. Detailed physical examination of every part of the patient's anatomy; and

123 3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

Paragraph Seven: An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of

physiotherapy, such as orthopedic or thermal procedures; surgery; and medication. Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from any arthritic or rheumatic ailment. It is possible, however, to restore to normal certain of such pathological changes which are due to vitamin deficiency, by administration in sufficient quantity of the appropriate vitamin.

Paragraph Eight: The thiamine chloride, which is a vitamin, contained in the drug preparation "Imdrin" is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritis or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones, for the reason that, when administered orally, as specified in the directions for taking Imdrin, succinates are converted to sugar by the liver, and, as succinates, never reach the bloodstream. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possesses active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name "aspirin". Accordingly, the drug preparation "Imdrin" does not constitute a new discovery of scientific research.

The analgesic effect of these salicylates, in the amount contained in the drug preparation "Imdrin", upon the aches, pains and discomfort of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational.

124 Paragraph Nine: The drug preparation "Imdrin", however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic

condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any such conditions. The drug preparation "Imdrin", however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Imdrin", however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief, the drug preparation "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis. Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking the drug preparation "Imdrin", to resume such habits or occupations.

The drug preparation "Imdrin", however taken, will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

Paragraph Ten: Respondents' representations concerning the drug preparation "Imdrin", as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

Conclusion.

The acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Order.

It Is Ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, directly or through any corporate or other
125 device, in connection with the offering for sale, sale and distribution of the drug preparation "Imdrin", or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin", to resume such normal habits or regular occupations;
126 (f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin", which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

Abner E. Lipscomb,
Hearing Examiner.

January 11, 1952.

127 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

In the Matter of Rhodes Pharmacal Company, Inc. and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc.	Docket No. 5691.

NOTICE OF INTENTION TO APPEAL FROM THE INITIAL DECISION, FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER OF THE TRIAL EXAMINER HEREIN.

(Received Jan. 30, 1952, Secretary.)

Respondents hereby serve this Notice of their Intention to Appeal from the Initial Decision, Findings as to the Facts, Conclusion and Order of the Trial Examiner herein, Abner E. Lipscomb, in accordance with Rule XXIII of the Rules of Practice under the Federal Trade Commission Act.

Frank E. Gettleman,
Arthur Gettleman,
Edward Brodkey,
Attorneys for Respondents.

Chicago, Illinois, January 29, 1952.

128 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

BRIEF OF ALL RESPONDENTS TO THE COMPLAINT CONSTITUTING THEIR APPEAL TO THE FEDERAL TRADE COMMISSION FROM THE INITIAL DECISION OF THE HEARING EXAMINER.

(Received Feb. 27, 1952, Secretary.)

Rhodes Pharmacal Company, Inc., a corporation, J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, Respondents herein, by Frank E. Gettleman, Arthur Gettleman and Edward Brodkey, their attorneys, hereby respectfully submit to and file with the Federal Trade Commission their appeal from the Initial Decision of the Hearing Examiner herein, pursuant to Rule XXIII of the Rules of Practice of the Federal Trade Commission.

* * * * *

133 II.

Statement of the Case.

In its complaint, issued August 17, 1949, the Federal Trade Commission charged the respondents with having violated the provisions of the Federal Trade Commission Act in having disseminated in interstate commerce certain radio and newspaper advertising for the purpose of inducing the purchase of respondents' product "Imdrin." The complaint set out the formula of the product, a list of the radio stations on which advertisements of "Imdrin" had been broadcast and a list of newspapers said to have printed "Imdrin" advertising. It alleged that respondents' said advertisements, directly or by implication, represented that "Imdrin" is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism, that it will arrest the progress of, correct the underlying causes of and cure

all kinds of arthritis or rheumatism, that it is an adequate, effective and reliable treatment for the symptoms and manifestations of these diseases and will afford complete and immediate relief from the aches, pains and discomforts thereof, that it is a remarkable, amazing, sensational new discovery of scientific research, that its use by those afflicted with these ailments will enable such persons to resume their normal living and usual occupations and that it will correct any disturbance of and insure adequate function of the vital enzyme systems of the blood and bones. The complaint charged that these implications or statements are false and misleading in material re-
134 spects in that "Imdrin" will not do any of the several matters and things so construed and laid to its charge. The complaint concludes that said false advertisements have the capacity to mislead and have misled and deceived the purchasing public, to the prejudice and injury of the public and in violation of the Act.

Respondents' answer, filed September 8, 1949, admitted the identity of the corporate respondent, the official capacities with respect thereto of the individual respondents and the dissemination in interstate commerce by the means in question of certain advertising. It specifically denied, however, the publication or dissemination of any advertising importing what the Commission charged such advertisements implied and denied each and every the charges contained in the complaint that such representations were untrue. Respondents, in their answer, further denied that the representations in question were misleading, false or violative of the Act, but specifically averred that the representations made and disseminated by them concerning their product "Imdrin" were true; they further denied that the acts and practices complained of were unfair methods of competition prohibited by the Act. The answer further denied that the advertisements complained of had the capacity to or did, in fact, mislead or deceive the purchasing public, but charged that no purchasers were misled by any false representations whatsoever; and it was denied that any
135 acts or practices were to the prejudice or injury of the public.

Issue being so joined on every allegation of the complaint except the identity of the respondents and the dissemination of advertising in interstate commerce, hear-

ings were held before the Hon. Abner E. Lipscomb, Hearing Examiner, on the dates and at the places following:

Date	Place
September 27 and 28, 1950	New York, New York
November 20, 1950	Chicago, Illinois
November 21, 1950	Chicago, Illinois
January 22, 1951	Cleveland, Ohio
February 15 and 16, 1951	Chicago, Illinois
April 4, 1951	Chicago, Illinois
April 5, 1951	Chicago, Illinois
April 25, 1951	New York, New York
May 22, 1951	Chicago, Illinois
May 23, 1951	Chicago, Illinois
June 27, 1951	New York, New York
September 18, 1951	Ann Arbor, Michigan
October 16, 1951	Buffalo, New York

At these hearings, the advertisements of respondents on which counsel for the Commission relied were received in evidence, and testimonial evidence was adduced from the following persons who testified for the Commission: Jerome H. Rose, J. Sanford Rose, Dr. Ephraim Shorr, Dr. Irving Graef, Dr. Edward F. Rosenberg, Dr. Evan M. Barton, Dr. Ralph Wolpaw, Dr. William Dodd Robinson and Dr. L. Maxwell Lockie. On behalf of respondents, the testimony of the following persons was taken: Dr. Seymour W. Weisberg, Dr. Arnold Black, Dr. Laurence H. Mayers, Dr. Aaron Arkin, Abraham M. Breiman, Peter J. Maretta, Mrs. Rhoda Lipsie, Mrs. Ida Klaus, Mrs. Ingeborg Larsen, King Hayes, Arthur Fremault, Louis Jacobs, E.
136 H. Carr, Mrs. Olive Mae Carr, Mrs. Katherine Gott, Bernard W. Vinissky, Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Dr. Edward B. Miller. The transcript of the testimony of these witnesses aggregates 1219 pages. So much of the substance thereof as respondents feel they are required to abstract or to reproduce in full to substantiate their exceptions herein appears in the section of this Brief numbered "IV—Argument", under the appropriate headings.

On January 4, 1952, the Hearing Examiner entered his order closing the record, and thereafter, on January 11, 1952, filed his Initial Decision.

In his Initial Decision, the Hearing Examiner found that the corporate and individual respondents were and had

been engaged in the manufacture and sale in interstate commerce of a medicinal preparation called "Imdrin", the formula for which he set out in his findings, and concerning which there is no dispute. The Hearing Examiner further found that the respondents had disseminated certain advertisements of their product, by radio broadcast and publication in newspapers, for the purpose of inducing its purchase. The examiner set out in his said findings excerpts from several of such advertisements which he characterized as "typical". In Paragraph Four of his findings, the examiner found that the advertising statements of respondents which he had quoted as "typical"
imported that "Imdrin" is a newly discovered drug
137 effective in the treatment of rheumatic and arthritic
conditions, that it possesses therapeutic properties curative of such conditions and that it is offered as a treatment for them. He further found that the numerous statements contained in respondents' advertising such as "no faster arthritic pain relief known", "relief of nagging aches, pains, swelling and stiffness accompanying arthritic and related illness", "one of the fastest arthritic and rheumatic pain relievers known to medical science", and "it is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis and certain forms of rheumatism, sciatica and neuritis" and others similar thereto relating to the relief of the symptoms and manifestations of these diseases do not sufficiently qualify or restrict respondents' other representations, in the light of examiner's inference as to their meanings to limit these representations to an offer of the product as a palliative. The examiner found that respondents offered "Imdrin" as a "cure". He further found that since respondents represented that their product would enable users to live happy, comfortable lives once again, that that representation meant only that "Imdrin" is an effective medication for the complaints in question. In the light of such reasoning, the Trial Examiner found specifically that by their advertisements respondents represented that "Imdrin" was a
"cure" for all kinds of rheumatism and arthritis and
138 as such, was an effective and reliable treatment for
those diseases and did arrest their progress and correct their underlying causes. He further specifically found that respondents represented that "Imdrin" constituted

an adequate, effective and reliable treatment for the symptoms of those diseases and did afford complete and permanent relief from the pains thereof. He further found respondents' representations to mean that their product was a remarkable, amazing, sensational new discovery of scientific research; that users of it would be enabled to resume their normal habits of life and their regular occupations; and that "Imdrin" would correct any disturbance of the vital enzyme systems of the blood and bones. In Paragraph Six of his findings, the examiner found that the many kinds of rheumatism and arthritis were characterized by various pathological conditions and progressed differently. He therefore concluded that all these forms required different kinds of treatment, and from that inference further concluded that proper treatment for these diseases must be predicated upon individual detailed diagnosis. In Paragraph Seven the examiner found that there is no drug or combination of drugs which will cure rheumatism and arthritis. In Paragraph Nine of his said findings, the examiner found, in effect, that "Imdrin" would not cure rheumatism or arthritis, arrest their progress, correct their underlying causes, or ameliorate the pains of those diseases beyond the temporary and partial relief afforded by the salicylate content of the preparation as that might relieve minor aches and pains in the individual case. 139 He further found that "Imdrin" would not enable persons forced by such ailments to discontinue their normal habits of life or regular occupations to resume such habits or occupations. The Hearing Examiner concluded that respondents' advertising was accordingly false and misleading, had misled a substantial portion of the purchasing public, constituted false advertisements within the meaning of the Act and was prejudicial and injurious to the public. He accordingly recommended that respondents be required to cease and desist from so advertising, in manner and form as is specifically set out in his proposed Order. The details of that Order will be hereinafter referred to in the portion of this Brief reserved for argument under the appropriate heading.

Respondents thereupon filed their notice of intention to appeal, in accordance with Rule XXIII of the Rules of Practice of the Federal Trade Commission, and in support thereof file this Brief.

140 III.

Exceptions to the Findings of Fact, Conclusions of Law and Order in the Initial Decision of the Hearing Examiner.

The respondents above named except to the Initial Decision, Findings as to the Facts, Conclusion, and Order of Abner E. Lipscomb, the Hearing Examiner duly appointed herein, filed January 11, 1952, and in particular, to the following findings of facts and conclusions of law contained in said Initial Decision:

First: To so much of the findings of the Hearing Examiner contained in Paragraph Four of his Initial Decision as state, in substance, that respondents' advertising means that the preparation "Imdrin" is a newly discovered drug, that it possesses therapeutic properties curative of rheumatic and arthritic conditions, that it is offered as a treatment for same, that respondents do not sufficiently qualify or restrict their general representations to constitute them offers of "Imdrin" only as an analgesic and antipyretic for the alleviation of the pains of rheumatism and arthritis, and that the language of respondents' advertisements imply that their product effects cures.

Second: These respondents, also except to the Hearing Examiner's rejection of respondents' proposed finding number 2 "That the advertisements so disseminated by respondents mean only that 'Imdrin' will provide relief of pain of arthritis or rheumatism and do not mean that 'Imdrin' will provide treatment and cure of arthritis and rheumatism," which the Hearing Examiner rejected as "contrary to the implications inherent in respondents' advertisements."

141 *Third:* Respondents further except to so much of the findings of the Hearing Examiner contained in Paragraph Six of his Initial Decision as find that since the progress and development of the diseases vary, dependent upon their different types and the differences of individuals suffering from them, the various forms of rheumatism and arthritis therefore require essentially different treatment. Respondents submit that this is definitely a non sequitur, since it is obvious that the same drugs may well provide symptomatic relief, as from pain and suffering, in greater or less degree, in a very large number of

different types of the diseases in question, without regard to the stage of progress of any such disease or the particular individual involved.

Fourth: Respondents except to the finding of the Hearing Examiner contained in Paragraph Eight of the Initial Decision that the calcium succinate content of "Imdrin" has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, since the evidence in the record on this point, if any, was completely inconclusive and highly speculative. It is further submitted that with respect to the finding that the caffeine contained in "Imdrin" has no significant therapeutic value in the treatment of these diseases, there is no evidence in the record upon which such a finding could be based. On the contrary, it is well known that caffeine is a stimulant.

Fifth: Respondents except to the finding of the Hearing Examiner set out in Paragraph Eight of his Initial Decision wherein the Hearing Examiner concludes that since manganese salicylate and acetylsalicylic acid are the only ingredients of "Imdrin" possessing active anal-
142 gesic properties and since their use and effect has been known for many years and since the latter of these is commonly called "aspirin," that it follows that "Imdrin" does not constitute a new discovery of scientific research. Respondents submit that there is not a scintilla of evidence in the record that there is any other product combining these same ingredients, and that their effect in such combination cannot be described, nor was it described, by any witness who had ever tried this particular preparation or combination of ingredients. On the contrary, respondents adduced voluminous testimony of actual users of the preparation itself, all of whom described its particular beneficial effect upon themselves.

Respondents further except to the finding of the Hearing Examiner contained in said paragraph of his Initial Decision that if the effect of "Imdrin" upon the pains of rheumatism and arthritis is limited and temporary, such drug cannot properly be called remarkable, amazing or sensational. It is submitted that these terms are merely permissible puffing or dealer's talk and are not shown in any respect to be untrue when literally or otherwise interpreted.

Sixth: Respondents except to so much of the findings of the Hearing Examiner contained in Paragraph Nine of his Initial Decision as recites that "Imdrin," however

taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof; also to the finding therein contained that "Imdrin" will have
143 no significant effect upon severe aches, pains and discomforts, and will afford temporary and partial relief of only minor aches and pains; also to the finding that "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition.

Seventh: Respondents also except to the refusal of the Hearing Examiner herein to find that the use of "Imdrin" as directed has relieved and will relieve the pains, suffering, inflammation, stiffness and redness of persons afflicted with rheumatism and arthritis, and has enabled them to resume their normal life, as requested by Respondents in their proposed finding No. 9.

Eighth: Respondents except to the rejection by the Hearing Examiner of their proposal No. 4, that he find that "since the causes of most rheumatism and arthritis are unknown, it is both unnecessary and impossible to remove these causes in order to effect proper treatment. Such treatment is confined to the relief of the symptoms of rheumatism and arthritis."

Ninth: Respondents except to the refusal of the Hearing Examiner to find that the amount of salicylates present in "Imdrin" would provide relief from pain and suffering in the cases of the majority of all persons afflicted with rheumatism or arthritis. The testimony of the various doctors who so testified is to be found at various points in the record. (Tr. 628, 636, 637, 647, 664, 671, 685, 688 and 686.)

Tenth: Respondents except to the refusal of the
144 Hearing Examiner to find that pain is completely subjective and is incapable of definition and classification as to degree of pain suffered. Respondents cannot agree that such proposition is either immaterial or contrary to the greater weight of the evidence herein. (Tr. 241, 240, 345, 348, 534, 579, 580 and 686.)

Eleventh: For the same reasons, Respondents except to the rejection by the Hearing Examiner of their proposal that most cases of rheumatism and arthritis are ambulatory and mild. (Tr. 240, 647, 654, 663, 706, 1142, 1195, 1207, 516 and 526.)

These Respondents similarly except to the conclusion of the Hearing Examiner that all of Respondents' acts and practices are to the prejudice and injury of the public and constitute unfair and deceptive acts in commerce, contrary to Statute. This conclusion is, as the name implies, only conclusory and adds nothing to any of the foregoing specific findings.

Twelfth: For the reasons set out in the Argument contained in Part IV of this Brief, Respondents except to the form and content of the order to cease and desist recommended by the Hearing Examiner as a part of his Initial Decision. Specifically, Respondents except to the terms of said order as they prohibit Respondents from disseminating in interstate commerce advertisements which represent that "Imdrin" is an adequate treatment for rheumatism or arthritis, that it will arrest their progress, correct their underlying causes or cure such conditions; but more specifically Respondents except to the prohibi-
145 tion by said order of their advertising that "Imdrin" will afford relief of the pains of arthritis or rheumatism or have any therapeutic effect upon any of its symptoms beyond affording temporary and partial relief of minor pains; and Respondents except to the prohibition contained in said order against their representing that "Imdrin" is a remarkable, amazing, sensational new discovery of scientific research, or that it will enable users to resume their normal habits or regular occupations.

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IV.

Argument.

1. Each and Every Finding of the Trial Examiner Must Be Supported by Substantial Evidence, Which Is Substantial in a Legal Sense.

It seems unnecessary at this late date to belabor the point, which the Commission will immediately recognize, that the findings of the Trial Examiner cannot stand unless they are based on legally substantial evidence to be found in the record. As Judge Major said in *Kidder Oil Co.* v. *Federal Trade Commission*, 7 Cir., 117 F. 2d 892, 894 (1941):

> "As is common in cases of this character, the primary question for decision is whether the findings of

fact as made by the Commission, upon which the cease and desist order is predicated, are sustained by *substantial evidence.*"

In that case, the Court found that the decision of the Commission as to the facts was not conclusive, since

"The conclusion follows, from what we have said, that the Commission's finding that petitioner's product (graphite motor oil) produces no beneficial result under 'boundary' conditions of lubrication, is without substantial support. On the other hand, the record convincingly discloses to the contrary. There is a difference of opinion, however, as to the extent of such benefits." *id.* p. 901.

The duty of a court on petition to set aside an order to cease and desist "is to examine the record to ascertain whether the findings are supported by the evidence." *National Silver Co.* v. *Federal Trade Commission*, 88 F. 2d 425 (1937), *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, *Federal Trade Commission* v. *Paramount Famous-Lasky Corp.*, 57 F. 2d 152 (CCA2).

Specifically, the Federal Trade Commission Act requires substantial evidence to support findings of the Commission before they can be said to be in any sense "conclu-
147 sive." In *Gelb* v. *Federal Trade Commission*, 2 Cir., 144 F. 2d 580, 582 (1944), the Court said:

"We are not unmindful of the statutory admonition that the Commission's findings as to the facts, 'if supported by evidence, shall be conclusive' • • • But this provision must be interpreted as requiring *substantial evidence* as the basis of findings in order to render them conclusive. *J. B. Lippincott Co.* v. *Federal Trade Commission*, 3 Cir., 137 F. 2d 490, 491 and authorities there cited."

And in the *Lippincott* case, *supra*, the Court in the Third Circuit in 1943, citing *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229, held that

"The requirement of evidence to support findings means *substantial evidence.*"

Compare also *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299, where the necessity for *substantial evidence* was spoken of as

being applicable to findings by administrative bodies. The Court in the *Lippincott* case held further:

> "We entertain no doubt that the provisions of the Federal Trade Commission Act as to the conclusiveness of the Commission's findings requires that the findings be supported by *substantial evidence.*"

The importance of this rule was stressed by the Court in the Seventh Circuit in 1946 in the case of *Carlay Co.* v. *Federal Trade Commission,* 153 F. 2d 493, 496, where it was pointed out that:

> "The rule of *substantial evidence* is one of fundamental importance and marks the dividing line between law and arbitrary power; and the requirement that a finding must be supported by *substantial evidence* does not go so far as to justify orders without a basis in evidence having rational, probative force."

And in an attempt further to define *substantial evidence* and to point out its characteristics, the Court continued:

148 "* * * evidence which is substantial * * * (affords) a substantial basis of fact from which the fact in issue can be reasonably inferred. (Citing cases). Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the facts to be established. 'It means such *relevant* evidence as a *reasonable mind* might accept as adequate to support a conclusion', *Consolidated Edison Co.* v. *N. L. R. B.,* 305 U. S. 197, 229; *N. L. R. B.* v. *Columbian Enameling & Stamping Co.,* 306 U. S. 292, 299."

And by way of further elaboration with respect to the concept, the Court said:

> Substantial evidence "excludes vague, uncertain or irrelevant matter. It implies a quality and character of proof which induces conviction and makes a lasting impression on reason." Citing the *Consolidated Edison Co.* and *Columbian Enameling & Stamping Co.* cases, *supra,* and *N. L. R. B.* v. *Thompson Products, Inc.,* 6 Cir., 97 F. 2d 13, 15.

While the foregoing descriptions of substantial evidence do not provide standards of mathematical precision by which to weigh or measure the evidence in the record, they do point out, meaningfully, that evidence, to be substantial,

must appear in the record, must provide a reasonable basis for inference, must have rational and probative force, must be more than a scintilla, must do more than create a suspicion, guess or conjecture of the existence of the fact to be established, and must be relevant and adequate to support a conclusion when tested by the logical processes. It excludes the vague and the uncertain and induces conviction by making a lasting impression on reason.

By way of illustration of types of evidence in the record and combinations of circumstances which the courts have refused to treat as substantial, the Commission's attention is respectfully directed to the case of *Gelb* v. *Federal Trade Commission*, 2 Cir., 144 F. 2d 580, 582 (1944). In that 149 case, it was held that where an expert for the Commission testified to his opinion, from analysis of the product "Clairol" that it *could not* recondition the hair, where many witnesses affirmatively stated from experience that it *did* and not a single witness who testified from experience in using the preparation *denied that it did* leave the the hair "reconditioned", this expert's inference to the contrary, based solely on his chemical analysis, without experience in the use of the preparation, cannot be regarded as *substantial evidence* that the product is incapable of reconditioning the hair.

As respondents will hereinafter point out, the evidence received in this case is not of such quality as satisfies the requirements of the substantial evidence rule and will not support the findings of fact, conclusions of law and recommended order of the Trial Examiner contained in his Initial Decision.

2. There Must Be a Basis in Substantial Evidence for the Findings of the Trial Examiner Underlying Each Issue in the Case.

Since the complaint filed by the Commission herein was traversed in all material respects by the answer of respondents, the record must disclose substantial evidence to support each element of the statutory violation charged. Respondents admitted only the dissemination in interstate commerce of the radio and newspaper advertising of their product "Imdrin" which counsel for the Commission charged was false and misleading. They specifically denied that the import of this advertising was as counsel for the Commission had construed it in the complaint; they further

denied that any representation made in such advertising was false, but asserted that it was true; they further denied that such advertising had misled or deceived or had
150 the tendency to so mislead or deceive any substantial portion of the purchasing public; and they specifically denied that their advertising opposed the public interest. It should accordingly follow that the record must disclose substantial evidence to support the Trial Examiner's findings (1) that respondents made certain specific representations in accordance with inference reasonably to be drawn from the language used, (2) that these representations are false, (3) that they have misled or have a tendency to mislead a substantial portion of the purchasing public and (4) that they are against the public interest.

3. There Is No Substantial Evidence in the Record Which Will Reasonably Support the Finding of the Trial Examiner That Respondents' Advertising Complained of Means That "Imdrin" Is a Newly Discovered Drug, That It Possesses Therapeutic Properties Curative of Rheumatic and Arthritic Conditions, That It Is Offered As a Treatment for Same and That It Is Not Offered Only as an Analgesic and Antipyretic for the Alleviation of the Pains of Rheumatism and Arthritis.

The Hearing Examiner found in Paragraph Four of his Initial Decision, in substance, that respondents' advertising means that the preparation "Imdrin" is a newly discovered drug, that it possesses therapeutic properties curative of rheumatic and arthritic conditions, that it is offered as a treatment for same, that respondents do not sufficiently qualify or restrict their general representations to constitute them offers of "Imdrin" only as an analgesic and antipyretic for the alleviation of the pains of rheumatism and arthritis, and that the language of respondents' advertisements imply that their product effects cures. Respondents' proposed finding number 2 "That the advertisements so disseminated by respondents mean only
151 that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that "Imdrin" will provide treatment and cure of arthritis and rheumatism was rejected as "contrary to the implications inherent in respondents' advertisements."

The attention of the Commission is respectfully directed to the fact that nowhere in the advertisements selected by

the Hearing Examiner are there any express representations such as the Examiner has seen fit to imply. He has arrived at the findings he has numbered 1 to 5, inclusive, in Paragraph Four of his Initial Decision by drawing what he has characterized as reasonable inferences from the language used. He has specifically found, by such process of inference, that respondents' ads mean:

1. That "Imdrin" is an adequate, effective and reliable treatment for all forms of rheumatism and arthritis, will arrest their progress, correct their underlying causes, and cure such diseases;
2. That "Imdrin" is an adequate, effective and reliable treatment for the symptoms of these diseases and will afford complete, permanent relief from the pains thereof;
3. That "Imdrin" is a remarkable, amazing, sensational new discovery;
4. That persons taking "Imdrin" might be enabled to resume their normal habits of living; and
5. That "Imdrin" will correct any disturbance of the vital enzyme systems of the blood and bones.

In their proposed findings, conclusions and order, respondents pointed out to the Hearing Examiner that "To determine the true meaning of respondents' advertise-
152 ments the Trial Examiner has before him (1) the advertisements themselves, (2) the testimony of one Dr. Edward F. Rosenberg as to what he believed his patients would understand the ads to mean (Tr. 258 to 313, and 558 to 572), and (3) the testimony of Abraham M. Breiman, an investigator and specialist in consumer research (Tr. 720 to 756), who testified to the results of a survey he conducted in order to learn what real members of the purchasing public would understand the "Imdrin" ads to mean."

It is submitted that the Hearing Examiner based his decision as to what respondents' ads meant entirely upon the inferences which he himself drew from them, in or out of context. He has completely ignored the testimony of Dr. Edward F. Rosenberg, who appeared for the Commission and testified in part as an expert on consumer reaction to the language of advertisements, and with that respondents have no quarrel; but, it is submitted, the Trial Examiner had no right to ignore the testimony of the investigator and specialist in consumer research, Abraham M. Breiman, since this individual described with particularity the results of surveys he had conducted to determine what a representative group of consumers would understand respond-

ents' advertisements to mean. There is no suggestion in the Initial Decision that the Hearing Examiner has taken Mr. Breiman's testimony and findings into account. If it was the intention of the Hearing Examiner to ignore this testimony, respondents, we believe, have a right to know why. It was not contradicted by any other evidence in the record.

At the outset, it should be made clear that respondents are familiar with and fully appreciative of the rule
153 of law laid down in *Gulf Oil Corporation* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106 (1945) that the meaning conveyed by advertisements to the public is a question of fact for the Commission to determine and its conclusion may not be disturbed unless arbitrary or clearly wrong. Yet we know that the courts have not hesitated to reverse the Commission in cases where the Trial Examiner or Commission has found meaning in advertising representations not justified by the language there used. In *Folds* v. *Federal Trade Commission*, 7 Cir., 187 F. 2d 658, 661 (1951), Judge Duffy, speaking for the Court, said:

> "The real basis for the Commission's complaint was that petitioners represented that Kleerex was an effective treatment for pimples. No such representation was ever made, but the Commission purported to find in the advertisements an implied representation to that effect, * * * We do not think that the Commission's finding that petitioners made such a representation is supported by substantial evidence. The action of the Commission is subject to the same criticism which this court made in *International Parts Corp.* v. *Federal Trade Commission*, 7 Cir., 133 F. 2d 883, where the manufacturer of an automobile muffler advertised that the metallic finish prevented rust and corrosion. The Commission there made a finding that the use of the word 'prevent' implied 'permanency'. This court there vacated the Commission's cease and desist order."

And in the *Gulf Oil Corporation* case, *supra*, the Court in the Fifth Circuit held that upon hearing before the Federal Trade Commission upon complaint charging a corporation with engaging in unfair practices in interstate commerce in advertising an insecticide manufactured by the corporation, testimony of witnesses drawn from the general public of impressions made upon their minds upon reading the advertisements was admissible against the contention that

such testimony was a matter of opinion for the Commission to decide. The courts and the Commission should
154 be definitely interested in all expressions of consumer reaction to the advertising in question.

Respondents well know that the Circuit Court of Appeals in the Seventh Circuit decided in the case of *Zenith Radio Corp.* v. *Federal Trade Commission*, 7 Cir., 143 F. 2d 29, 31 (1944) that

> "The Commission was not required to sample public opinion to determine what the petitioner was representing to the public."

But the Court went on to say that

> "The Commission had a right to look at the advertisements, *consider the relevant evidence in the record that would aid it in interpreting the advertisements*, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint."

It should be noted that the Court did not say it would regard it as sufficient if the Commission considered the text of the advertisements alone, except in the event there was no other evidence in the record which would aid in determining what the advertisements meant. In that case, the Court did not propose to require the Commission to go out of its way to find and adduce evidence in point from the purchasing public. But it seems obvious that in any case where there is such evidence in the record as will serve to enlighten the Commission as to the true meaning of these representations, the Court did not intend to authorize the Commission to disregard it. On the contrary, the courts have always held that the decision of the Commission must be predicated on the entire record in the case.

On its part, the Commission has in many cases sampled public opinion as to the meaning of advertising representations to both lay persons and professional experts and
155 has adduced testimony in hearings with respect thereto. On the basis of such evidence as to consumer reaction, part of it very strained, remote and conjectural, numerous cease and desist orders have been entered and this evidence has been taken into account by the courts on review. In *Gulf Oil Corporation* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106, 108 (1945), Judge Lee collected these cases in a footnote. They include *Stanley*

Laboratories v. Federal Trade Commission, 9 Cir., 138 F. 2d 388, 391; *Charles of the Ritz* v. *Federal Trade Commission*, 2 Cir., 143 F. 2d 676, 679; *Aronberg* v. *Federal Trade Commission*, 7 Cir., 132 F. 2d 165, 167, 168; *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 681, 682; *Ford Motor Co.* v. *Federal Trade Commission*, 6 Cir., 120 F. 2d 175, 182; *Hall* v. *U. S.*, 5 Cir., 267 Fed. 795, 797. With respect to the propriety of considering such evidence of public reaction to advertising, the Court said:

> "The issue was the impression made or likely to be made upon the reading public by the petitioner's representations of the good qualities of its product, as conveyed in the advertisements. The testimony of witnesses drawn from the general public of the impressions made upon their minds upon reading the advertisements was admissible. *This procedure in investigations of this kind has been in use over a period of years and has received the sanction of the courts.*"

Respondents, on their part, produced in evidence the results of a survey of 300 persons (Tr. 728), including 13 interviews obtained of customers in drug stores (Tr. 728), and the balance in factories, homes and retail establishments. These were interviews of factory workers, office workers, housewives, business men, some educated more so, some less so (Tr. 728). Only a small number of these persons were known to the sampler (Tr. 737). Most of them were strangers. Each was shown representative sam-
156 ples of the advertising in question (Commission's Exhibits 6, 8 and 13—Tr. 731) and, after having been allowed to read and study these ads, was asked successively and in the alternative (Tr. 730, 743) whether the advertising promised him or her relief from the pain of arthritis or rheumatism or a cure or effective treatment of those diseases. The results of the first or February part of the survey were, of 150 people interviewed 137 stated that these ads meant that "Imdrin" would provide relief of pain, and the balance of 13 said that the ads meant that "Imdrin" would provide treatment cure; that is 91.3 per cent of those consulted thought the ads meant or implied pain relief, while only 8.7 per cent thought that the ads meant that "Imdrin" would provide treatment or cure (Tr. 731). Similarly, of another 150 people interviewed in April, 1951, 136 or 90.7 per cent stated they understood the ads to

mean that "Imdrin" would provide relief of pain of rheumatism and arthritis, as against 14 or 9.3 per cent who said that the ads meant treatment or cure (Tr. 732).

In the light of this specific testimony as to consumer understanding of the meaning of advertising, respondents believe that no amount of speculation or inference will suffice to show the contrary. That the courts are interested in knowing what the consuming public would testify an advertising representation would lead them to believe is evident from the opinion of Judge Major in *Allen B. Wrisley Co., et al.* v. *Federal Trade Commission*, 7 Cir., 113 F. 2nd 437, 440. In that case it was *stipulated* that if thirty persons, members of the consuming public, were called to testify, sixteen would say that they understood "Olive Oil Soap" (so labeled) to mean "one the oil content of which is 100% olive oil." The Court said:

157 "In our judgment, such a stipulation can be given little, if any weight, and cannot be said to be substantial in view of the unanimous testimony to the contrary given by witnesses who appeared personally."

On the hearing of this case, counsel for respondents made this statement for the record (Tr. 755, 756):

> "As indicated by the Trial Examiner when we were off the record, and I am in complete agreement with his statement in this regard, that there is no point in putting these records (of the survey) of Mr. Breiman in the record.
>
> "I would, however, like to make this statement for the record, and that is that we are ready, by any means, to permit the government to have the names of these various people who were asked the two questions testified to by Mr. Breiman, and whose responses thereto were recorded here."

Respondents believe their survey was fair, thorough and revealing and provides the Trial Examiner with his only reliable evidence of consumer reaction.

An analysis of the results of the survey shows that to the ordinary consumer respondents' advertisements do not mean that "Imdrin" is an adequate treatment for rheumatism and arthritis, except in the sense that alleviation of pain is a treatment, or that it will arrest the progress or correct the underlying causes of these diseases or cure them; however, respondents have little quarrel with the

Hearing Examiner's finding that their product is a reliable treatment for the symptoms of these diseases which, it is the position of these respondents, "Imdrin" will do; they cannot agree, however, that there is any implication in their advertising that "Imdrin" will afford complete or permanent relief from these aches and pains. The word "relief" itself implies something temporary or transitory. There is not a scintilla of evidence that "Imdrin" is not a new combination of ingredients or a new product of scientific research.

158 As to the Hearing Examiner's finding numbered 4 in said Paragraph Four, that persons taking "Imdrin" will be enabled to resume their normal habits of life, respondents have no quarrel with the finding that such representation is made, but say that all the evidence in the record shows that it is true.

It is submitted that there is nothing in the record supporting the Hearing Examiner's finding that "Imdrin" ads represent that that product will correct any disturbance of the vital enzyme systems of the blood and bones.

The foregoing inferences of the Trial Examiner are neither logical nor reasonable, they have no adequate support in evidence in the record, but the only factual evidence in the record is directly opposed to these findings.

Again, in *Stanley Laboratories, Inc.* v. *Federal Trade Commission*, 9 Cir., 138 F. 2d 388, 391, both doctors and lay persons were permitted to testify to the impressions they received and what they thought was meant by the expression "MD Medicated Douche Powder" and whether or not the abbreviation MD would mislead them into believing that the product in question claimed the endorsement of physicians. The Court said:

> "Several lay witnesses testified that the petitioners' advertising matter gave them the impression that the medical profession made or endorsed MD Powder. Counsel objected to the 'groundwork' laid for that testimony. As we shall see later, however, such technical objections are out of place in the consideration of testimony given before an administrative board such as the Federal Trade Commission."

But completely independent of the sole evidence in the record on the actual reactions of flesh and blood individuals to the language of respondents' advertising repre-

159 sentations and what those ads meant to them as shown

by respondents' survey of three hundred persons, is the meaning of the language used itself, in the light of common sense, reason and certain constructions of the courts.

In *International Parts Corporation* v. *Federal Trade Commission,* 7 Cir., 133 F. 2d 883, 886, Judge Minton observed:

> "The petitioner will be presumed to have used the word (prevents) in its ordinary and commonly accepted understanding, in the absence of any showing to the contrary."

Respondents cannot believe that any holding of any court which has for its purpose the excusing of ignorant members of the purchasing public, if such they be, from interpreting advertisements with a dictionary in one hand, was intended to exempt those persons from all responsibility for knowing the commonly accepted meaning of simple words and expressions. In the *International Parts Corporation* case, above, Judge Minton said; starting at page 885 of the opinion:

> "In Paragraph 2 of the Commission's order, the petitioner is ordered to cease and desist from representing that the finish on its mufflers permanently prevents rust or corrosion. The petitioner never represented that the finish on its mufflers would prevent rust *permanently.* The word "permanently" was interpolated by the Commission. The Commission's finding is that, 'While the finish may serve to prevent rust and corrosion for a *limited period of time,* it does not afford permanent protection against such conditions.' (Our (the Court's) emphasis). The petitioner never said that it did afford permanent protection against such conditions. The petitioner said only that the finish prevents rust and corrosion. The Commission admits that the finish does prevent rust and corrosion for a period of time, but states the petitioner is misrepresenting the facts when it says the finish will prevent rust and corrosion *permanently.* The Commission cannot interpolate into the petitioner's representations words not there, and then find the petitioner guilty of misrepresentation because the petitioner's product does not meet the Commission's revised representations. The word 'prevents' is a word of common understanding, and the common acceptation of this

word carries no connotation of permanency. The petitioner will be presumed to have used the word in its ordinary and commonly accepted understanding, in the
160 absence of any showing to the contrary. Without the word 'permanently' interpolated, there is no misrepresentation. The word 'permanently' is the Commission's word, not the petitioner's. The petitioner answers for its own representations, and not those of the Commission. The evidence does not support Paragraph 2 of the order."

Applying this sensible, well reasoned decision to the facts of this case, we see that the Trial Examiner's proposed order to cease and desist would require Respondents, in Paragraph 1(c) thereof, to cease and desist from representing that their preparation will afford "relief" from the pains of various kinds of rheumatism or arthritis in excess of temporary and partial "relief." Respondents' advertisements set out by the Trial Examiner in his Initial Decision show exactly what respondents claim "Imdrin" will do to pain: they say "No Faster Arthritic *Pain Relief* Known", "• • • *relieving* the agonizing pains of rheumatism and arthritis," "reduction of pain," "*Relieves* Pain and Suffering", "• • • the wonderful *relief* from Imdrin, "• • • arthritic and rheumatic pain *relievers*", "• • • designed to *aid in the relief* of nagging aches, pains • • •" and other statements of like import. Applying the language of Judge Minton in his opinion in the *International Parts Corporation* case, *supra,* the Respondents never represented that their product "Imdrin" would relieve pain *permanently.* The word "*permanently*" was interpolated by the Trial Examiner. His findings is that "The drug preparation 'Imdrin' • • • will afford *temporary and partial* relief of only minor aches, pains and discomforts" (Our emphasis.) The respondents never said that it did afford permanent relief from such conditions. They said only that it affords "relief" or "aids in relief." The Trial
Examiner admits that "Imdrin" does provide relief
161 from pain for a period of time, but states that Respondents are misrepresenting the facts when they say "Imdrin" will relieve pain *permanently.* The Trial Examiner cannot interpolate into the Respondents' representations words not there, and then find the Respondents guilty of misrepresentation if Respondents' product does not meet the Trial Examiner's revised representations. The

word "relieves" is a word of common understanding, and the common acceptance of this word carries no connotation of permanency. Respondents will be presumed to have used the word in its ordinary and commonly accepted understanding. Without the word "permanently" interpolated, there is no misrepresentation. The word "permanently" is the Trial Examiner's word, not the Respondent's answer to their own representations, and not those of the Trial Examiner.

And to demonstrate to the Commission that the words "relief" and "relieve" have been passed on by the courts and held not to contain any implication of permanency, Respondents cite the authority of Judge Major's decision in the case of *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 682 (1942), where the Court said in point (4) of its opinion:

> "We are also of the view that the word 'temporary' as used in Paragraphs 1(a), (b), (c), (e) and (g) of the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. *It does not cure either the itch or its cause, but it does afford relief.* (Emphasis ours.) One of the definitions given by Webster for the word 'relief' is 'lessens evil, pain, etc.' The words 'relief from itching' could, in our minds carry no implication to the Public that the product was a permanent cure either for the symptoms or the disease. The word 'temporary' carries an uncertain meaning. As the Commission's doctor stated: 'It might mean a few minutes or an hour or so.' To require its use would serve no purpose in the protection of the public, but might limit petitioner in truthfully representing its product."

162 The foregoing quotation might likewise be paraphrased to include the facts in Respondent's case. We note only that the Court held that there is no implication of permanency, to the public, in the representation of relief from pain, that the use of "temporary" is undesirable and that the Court used Webster's dictionary as a source of authority to make the first determination.

Further, the Trial Examiner makes much of Respondents' use of terms like "Amazing" and "Sensational" in its advertisements. He says such a drug preparation as "Imdrin" "Is not remarkable, amazing or sensational

(Paragraph Eight of his Findings.) and he implies that this is a misrepresentation which will mislead or deceive the public. Fortunately our courts have also passed on the propriety of the use of words of this kind. In the well known case of *Kidder Oil Company* v. *Federal Trade Commission*, 7 Cir., 117 F. 2d 892, the Court said, at page 901:

> "Petitioner's representation that its product will enable a motor car to operate an '*amazing* distance' (Emphasis ours) without oil, or that its product is a 'perfect' lubrication, evidently is some exaggeration. To what extent, however, it is difficult to say. Such terms are largely a matter of personal opinion. What might be an 'amazing distance' to one person might cause no surprise to another. So far as we know, there is nothing 'perfect' in this world, but still it is a common term, which undoubtedly means nothing more than that the product is good or of high quality * * *. As used by petitioner, * * * we are of the opinion that they are nothing more than a form of 'puffing', not calculated to deceive."

The Hearing Examiner also takes exception to Respondents' use of the term "new" in their advertising wherein they characterize "Imdrin" as a new, scientific discovery. His position, in effect, is that so long as Respondents' product contains as one of its principal active ingredient what is commonly called aspirin, it cannot truthfully
163 be described as "new." It is Respondents' contention that when a medicinal product employs a new formula resulting in a different end product, it may be correctly designated a new product, even if the formula includes certain long known active ingredients. This to us makes sense, and the case of *Federal Trade Commission* v. *Standard Education Society, et al.*, 2 Cir., 86 F. 2d 692, 696 (1936), provides scant authority contra and is easily distinguishable on the facts from the case at hand. There the Court did say:

> "The fourth clause (of the cease and desist order, forbad calling the work (an old encyclopedia with new loose-leaf supplements) a 'recently completed, *new*, and up-to-date encyclopedia.' The findings scarcely support so broad a prohibition. * * * Of course, nobody in his senses supposes that an encyclopedia had not used earlier works as sources; but it seems to us that he might assume that it has been rewritten, perhaps

throughout. * * * *It was not new in the sense people would understand the word, applied to a book* which came in that guise; even a substantial revision does not make a new work."

But that is not to say that such application of the term "new" is to be made as a rule of thumb without regard to the subject matter affected. It is conceivable that a prospective purchaser of an encyclopedia might believe that one described as "new" was at least completely rewritten and preferably of entirely new material. On the other hand, what would purchasers of "Imdrin", claimed to be a new product, expect to receive. We anticipate that the Trial Examiner would have us believe that a prospective purchaser of "Imdrin" would understand that he was buying something like one of the sulfanilomides or antibiotics or perhaps ACTH or Cortizone. In that connection it should be borne in mind that Respondents' representations as to the newness of their preparation were first made long prior to the time when the general public first became aware of the existence of and claims made for ACTH and Cortizone. As to sulfa and penicillin, it is
164 well known that each of these families of drugs is being added to by others of like kind, at an incredible rate, yet we are not aware of any deception being perpetrated on the unsuspecting public by referring to each as a new discovery,—this despite the fact that the differences in effect between the first and the last discovered may be slight, if, indeed, they exist at all. We repeat: There is really little "new" under the sun. It has been said that "the word 'new' is a relative term." *Mills County* v. *Brown County*, 29 S. W. 650, 651, 87 Tex. 475. A teacher in the public schools has been said to be a "new" teacher within the meaning of an applicable statute despite the fact that she had withdrawn and been re-employed after many years of service. *Taintor* v. *City of Hartford*, 197 A. 173, 123 Conn. 515. It has further been held that "an improved composite food product and making the same may be patented as a 'new' and useful combination of matter." *P. W. Sharpless Co.* v. *Crawford Farms*, C. C. A. N. Y., 287 Fed. 655, 658. And may we remind the Commission, by way of striking illustration of the relative nature of the term "new," of the case of the Holy Scriptures. The canonical books which appeared upon the advent of the Christian era, though now nearly twenty cen-

turies old, are known in group as the New Testament, in contradistinction to the former canonical books, which are known together as the Old Testament.

Since counsel supporting the complaint has heretofore taken refuge in certain vague and dubious decisions holding that when an advertiser represents that his prod-
165 uct is sold "for" a disease or complaint, it can be said that he thereby represents a "cure", *Aronberg* v. *Federal Trade Commission*, 7 Cir., 132 F. 2d 165, 168, citing *U. S.* v. *11¼ Doz. Packages*, D. C. W. D. N. Y. (1941), 40 F. Supp. 208, 210 and *Hall* v. *U. S.*, 5 Cir., 267 Fed. 795, 798, it is to be assumed that the Trial Examiner was similarly persuaded and that that conviction entered into his decision. It should be borne in mind that the product under consideration in the *Aronberg* case, *supra*, was an abortifacient for delayed menstruation. In such case, it is patent that to relieve such condition or accomplish any beneficial effect is to cure it. When applied to a product sold for that purpose, the term "for" can have but one meaning and that "cure." The decision of the court is further fortified by the fact that it is uniformly recognized that there is such a thing as a "cure" for the described condition. It is obvious that use of the term "for" in connection with a named disease or condition need not mean "cure" either where the disease in question, like rheumatism or arthritis, is known generally to be incurable or where it is generally agreed, as here, that the most common treatment is symptomatic and consists in the alleviation of pain. Under such conditions, it is more logical to assume that a preparation sold "for" the "relief of the pains and aches of rheumatism and arthritis" is sold as a palliative. That the courts, in the above cited cases, did not mean to state categorically that any time an advertiser used the word "for" in his advertisement of a drug, he represented that he was selling a "cure" is apparent from the language of the Court in the last named
166 case, *Hall* v. *U. S.*, 5 Cir., 267 Fed. 795, 796, 797, where it was said:

> "Each bottle (of medicine) mentioned was encased by a carton with the following printing or label thereon, to wit: '• • • Hall's Great Discovery, *for* Kidney and Bladder Troubles, Diabetes, Weak and Lame Backs, *Rheumatism* (etc.)' • • • When so read and construed, it amounted to an assertion that the article

> referred to, if used as directed, might be expected to have a curative or *alleviative* effect on the classes of ailments mentioned." (Emphasis supplied.)

It is fair to assume that the Court in the *Aronberg* case, *supra*, was guided by the considerations of this decision which holds that the term "for", used in the connection stated, may connote either a cure or a palliative. The implication is that it is to be treated as a relative term, its meaning dependent upon the context in which it is used. It would seem that when the word "for" was used solely on a label or a simple circular containing a minimum of explanation as to the intended connotation of the term, it is more susceptible of interpretation as meaning "cure" than when, as here, it is repeatedly and particularly referred to as "for the relief of pains."

That rheumatism and arthritis are generally regarded as incurable cannot be doubted. At this point, we must note, and the attention of the Commission is respectfully directed to the fact that Respondents accordingly except to the rejection by the Hearing Examiner of their proposed finding No. 4 that he find that "since the causes of most rheumatism and arthritis are unknown, it is both unnecessary and impossible to remove such causes in order to effect proper treatment. Such treatment is confined to the relief of the symptoms of rheumatism and arthri-
167 tis." Respondents assume that the Hearing Examiner has adopted so much of their proposal as recites that the causes of most of these diseases are unknown, but rejected Respondents' proposal that on that account it is both unnecessary and impossible to remove those causes. That conclusion, to us, seems axiomatic. Similarly, it is assumed that the Examiner rejected Respondents' proposal that on this account, treatment is confined to the relief of symptoms of such diseases. Respondents submit that there is no evidence in the record to sustain any such rejection, but there is abundant evidence to sustain the proposal itself.

It seems well agreed by all the eminent physicians who testified at the various hearings that there is no known cure for the common primary type of arthritis. Dr. Seymour Weisberg so testified (Tr. 580). He further testified (Tr. 619) "* * * it is not always possible" to correct the underlying causes of the pathological changes occurring in certain forms of rheumatism and arthritis. Further, Dr.

Weisberg testified (Tr. 580) "It is not uncommon, as a matter of fact, to treat a condition without knowing the primary cause." He further testified that salicylate therapy for the alleviation of the pains of rheumatism and arthritis, whether or not it will remove the cause of such a disease, can be said to be an effective treatment or remedy for that disease.

Similarly, Dr. Arnold Black, testifying for respondents, said that when he gave or dispensed salicylates for rheumatism or arthritis he would call that a treatment (Tr. 645), and that "The approach to the treatment of a great many diseases these days is not an approach to the
168 etiology because we do not know the etiology. It is frequently symptomatic" (Tr. 655).

Dr. Ralph Wolpaw, testifying for the Commission, said: "Any pain or ache will be classified as rheumatism in many cases" (Tr. 477); that osteo-arthritis is a normal aging process (Tr. 527); he further stated (Tr. 529) that "patients coming in aren't too interested in causes, they are primarily interested in getting relief, so that we have to direct our efforts toward that."

Also Dr. Evan M. Barton, for the Commission, testified that pain was the cardinal symptom in each and every form of rheumatism and arthritis (Tr. 353); that the alleviation of pain is important (Tr. 339); also that relief "is effective when the pain goes away" (Tr. 344).

It further appears from the record that with the decrease of pain and suffering will come increased mobility and subsidence of redness and swelling. Dr. Weisberg testified (Tr. 579) that "when pain subsides there is a diminution of redness and swelling"; that "it is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part" (Tr. 579); that "as a matter of fact, prolonged immobility in a particular position is apt to cause a chronic deformity of the particular joint" (Tr. 623); that "one ordinarily requests the patient to put the joint through the range of motion which does not elicit pain" (Tr. 624).

Dr. Wm. Dodd Robinson, for the Commission, admitted that salicylates could be considered, to a variable de-
169 gree, an adequate treatment for stiffness of rheumatism and arthritis, the causes of which are unknown (Tr. 1091); that salicylates will have an effect on the pains of gout (Tr. 1095); that "the use of salicylates under those

circumstances may permit increased mobility due to relief of pain" (Tr. 1122); and that "in general mobility is certainly good" (Tr. 1122); that "motion is desirable to maintain muscle tone and to maintain nerve control, maintain muscle strength so that if and when the inflammatory processes subsides the functional condition of the joint will be preserved. There are additional theoretical reasons that apply in various types of arthritis * * *" (Tr. 1143, 1144).

Similarly, Dr. L. Maxwell Lockie testified that: "I feel that salicylates, through its action in the thymus, will make a person less conscious of the primary cause, and under those circumstances it may decrease the stiffness as a symptom" (Tr. 1169); and that in mild cases of rheumatism and arthritis mobility is desirable (Tr. 1193).

Dr. Black testified that in "rheumatoid arthritis, and if there is some relief from pain by the administration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation" (Tr. 646); that "there is increase in mobility except where ankylosis has existed previously;" (Tr. 646) that with respect to the removal of the cause in order to correct
170 inflammatory pathological changes "you can't remove the cause because you don't know what it is, you don't know what the cause of rheumatoid arthritis is;" however, that one can alleviate those inflammatory changes somewhat (Tr. 656).

It seems obvious, therefore, that Dr. Weisberg was correct when he testified that:

> "Very frequently the doctor, particularly when he is confronted by a disease for which there is no known cure, is compelled to resort to what is known as symptomatic treatment. He offers medication which provides relief from the discomfort caused by the disorder and he hopes—fortunately most of the time he is right—that sooner or later the natural restorative processes will correct the underlying condition." (Tr. 634)

Further, we cannot agree with the Hearing Examiner in his conclusion that Respondents' picturization in their advertising of an anatomical chart, accompanied by the statement, "Where Rheumatism Strikes And How To Detect It" logically warrants *any* inference, much less com-

pe[illegible] that presumption that "Imdrin" is offered as a treatment (in the sense of a "cure") for rheumatic and arthritic conditions. It is more logical to assume that a reader would interpret such picturization and language as a suggestion that if he has pains in the regions depicted, he *may* have a form of rheumatism. It does not reasonably follow that any drug advertised in connection with the disease will be understood to offer a "cure" for that disease. After all, it is commonly known and indisputable that people do commonly treat a large variety of diseases and conditions known or supposed to be incurable. In her testimony
171 otherwise quoted in this Brief, Respondents' witness Mrs. Ingeborg Larson did volunteer (Tr. 810) that:

> "A. It ("Imdrin") gave me relief.
> "Q. It gave you relief?
> "A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure."

Neither can Respondents appreciate by what logical process the Hearing Examiner concludes in Paragraph Four of his Initial Decision that if Respondents represent in their advertising that persons who had suffered from rheumatism and arthritis had been enabled, upon taking "Imdrin", to "live happy, comfortable lives once again," importing that such statements may be truthfully made, it follows that Respondents thereby represent that their preparation is an effective medication (other than as a palliative) for rheumatism and arthritis.

As heretofore recited, Respondents know that the job of drawing *reasonable* inferences from the admitted facts is for the Commission. It is also clear that the Trial Examiner and the Commission may choose between two reasonable inferences, *Allied Paper Mills* v. *Federal Trade Commission*, 7 Cir., 168 F. 2d 600 (1948), just as a court may do where it must find the facts. But it does not follow from that proposition that the Trial Examiner may either choose between *unreasonable* inferences or adopt an *unreasonable* inference in preference to a *reasonable* or *more reasonable* one. In the *Allied Paper Mills* case, *supra*, Judge Minton stated at page 605 of the opinion:

172 "In view of this, we cannot sustain the petitioners' contention that where two contradictory and *reasonable* inferences may be drawn from the same evidence, the *reasonable* inference of guilt found by the Commis-

sion is not supported by substantial evidence. *If the Commission's inference from the facts is reasonable,* our inquiry ceases." (Emphasis supplied.)

The inescapable conclusion is that in any case where the inference is not secure in reason and logic, but is the result of guess, conjecture, or speculation, it cannot be allowed to stand.

While the determination of what is and what is not reasonable is also a process lacking mathematical precision, it can be aided by the application of the principles applicable to the syllogistic process as well as by the law applicable to the determination of relevancy.

Tested by the foregoing considerations, we find, that the deductive mental processes in which the Hearing Examiner must have indulged would have included the following:

1. The examiner starts with the assumption that most sufferers from rheumatism and arthritis hope to be cured.

2. He then infers that because such persons hope to be cured, they believe there may be a cure for the diseases in question.

3. He further infers that because such persons may believe there may be a cure for rheumatism and arthritis, it follows that they may believe there may be a cure for the particular kind of rheumatism and arthritis with which such person may be afflicted.

4. The examiner next infers that because sufferers may believe the foregoing, they believe there may be a medicine which will alone effect such a cure.

173 5. The examiner next infers that because sufferers from rheumatism and arthritis may believe that there is a medicine that may cure those diseases, they may believe that any medicine advertised in connection with the disease may effect such a cure.

6. He next infers that since sufferers from rheumatism and arthritis may believe that any medicine advertised in connection with those diseases may offer to cure them, those sufferers will not read the advertisements in question or will not understand the true, literal meaning of those advertisements.

7. Finally, he infers that because sufferers from rheumatism and arthritis generally will not read the advertisements or, having read them, will fail to understand them, they will not read or understand Respondents' particular advertisements.

Professor Morgan, in his book *Cases and Materials on Evidence*, 2nd Edition, (1951) page 122 states:

> "Obviously the value of item (1) as probative of conclusion (6) varies inversely with the number and dubiousness of the intervening inferences."

That each of the foregoing premises is fallacious, dubious or improbable goes without saying. Many are absurd or ridiculous. If it be true that sufferers from these diseases hope to be cured, which seems a reasonable assumption, it does not follow with any degree of assurance that any appreciable number of such persons, particularly those who have attempted to treat the disease for any appreciable length of time, would believe a cure possible. Many patients, like their doctors, understand that, since the causes of most rheumatism and arthritis are unknown, there can be no cure for those conditions except perhaps in the very
174 small number of cases of "infectious" arthritis, all of which would likely be under the care of a physician for the specific diseases involved, as in the cases of tuberculosis, syphilis and the like. Beyond this, the next premise assumes that if a prospective purchaser believes there may be a cure for rheumatism and arthritis, he believes there may be a cure for every kind of those diseases including the kind with which he is afflicted. This completely ignores the fact that the public generally have seen science make remarkable strides in curing certain diseases, but not all diseases, and certain kinds of particular diseases, but not all of them. Again, there is no good reason to believe that the purchasing public is gullible enough to suppose that all diseases susceptible of cure can be cured by drugs alone. It is common knowledge that cure or arrest of cancer may require surgery, radiation or other treatment. If the prospective purchaser has ever used other drugs, he is naturally skeptical of any claims to cure. Perhaps the most fallacious assumption is that the prospective reader will not read or understand the true import of the advertisement in question. Experience shows that sufferers read and digest every line of the largest advertisements. If such were not the case, there would be no cause for concern on the part of the Commission as to what those ads could do. To assume that in this day and age the reading public is substantially ignorant and credulous rather than literate and skeptical is certainly an unwarranted assumption completely opposed to commonly known facts. The language

of the advertisements is plain and its reasonable connotation simple. It seems clear that the premises are too
175 numerous, uncertain or clearly fallacious to warrant the purely conjectural finding of the Hearing Examiner that it is logical or reasonable to infer that Respondents' representations concerning "Imdrin" would be understood by readers to promise a cure for rheumatism or arthritis. We believe the likelihood is logically otherwise and that position is supported by the results of an actual canvas of such persons. It therefore follows, as Lord Chief Justice Holt pointed out in *Coggs* v. *Bernard*, King's Bench, 2 Ld. Raym. 909 (1703): "So that there is neither sufficient reason nor authority to support the opinion."

176 4. The Weight of Probative Evidence Shows That Respondents' Representations Concerning "Imdrin" Are True, Real, Factual and Substantial.

In his Initial Decision, the Hearing Examiner refused to find that the use of "Imdrin" as directed has relieved and will relieve the pains, suffering, inflammation, stiffness and redness of persons afflicted with rheumatism and arthritis, and has enabled them to resume their normal life, as requested by Respondents in their proposed finding No. 9, but, on the contrary, found that "Imdrin", however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof; that "Imdrin" will have no significant effect upon severe aches, pains and discomforts, and will afford temporary and partial relief of only minor aches and pains; also that "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition.

More impressive than any theory advanced by the Commission's medical witnesses, none of whom had ever used or prescribed "Imdrin", as to its efficacy in alleviating the pains and other symptoms of rheumatism and arthri-
177 tis, is the testimony in the record of the actual experiences of fourteen live users of the product (Tr. 761 to 823, 844 to 867, 868 to 946 and 987 to 1021). Each of these disinterested persons testified enthusiastically to the excellent results he or she had experienced from his or her use of "Imdrin".

These sufferers from rheumatism and arthritis included Peter J. Maretta, Mrs. Rhoda Lipsie, Mrs. Ida Klaus, Mrs.

Ingeborg Larson, King Hayes, Arthur Fremault, Louis Jacobs, E. H. Carr, Olive Mae Carr, Katherine Gott, Bernard Vinissky, Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield.

Each was examined by a physician who diagnosed his or her ailment as some form of rheumatism or arthritis (Tr. 823 to 844), (Tr. 946 to 985) and (Tr. 1021 to 1070), or it was stipulated by counsel that such was the case (Tr. 871, 923 and 1068). It was stipulated that Louis Jacobs of Cleveland, Ohio who testified in this cause had been a patient of Dr. Wolpaw who had previously testified for the Commission, and that Dr. Wolpaw had diagnosed Mr. Jacobs' case as gouty arthritis (Tr. 871); similarly, it was agreed by counsel that Bernard Vinissky of Chicago, Illinois had been a patient of Dr. Rosenberg, a Commission witness, and that Dr. Rosenberg had diagnosed Mr. Vinissky's condition as gouty arthritis (Tr. 923). Dr. Edward B. Miller of New York, appearing for respondents, testified that he had examined Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield (Tr. 1025). He found Mrs. Marchena to have a condition
178 "which we call a degenerative arthritis" or "osteoarthritis" (Tr. 1031); that Mrs. Raaberg "represents the same disease" but "a little more advanced form" (Tr. 1039); that as to Mr. Greenfield, he had bursitis (Tr. 1045) and neuritis (Tr. 1047). Since counsel for the Commission has seen fit to question the adequacy of certain diagnoses made by respondents' witness Dr. Weisberg, as will hereinafter appear, to the extent of holding two hearings designed to adduce rebuttal evidence with respect thereto, and has wholly failed on such occasions to attack the adequacy of Dr. Miller's diagnoses, it is to be assumed that Counsel is either satisfied with those diagnoses or recognizes his inability to discredit Dr. Miller in that behalf.

The balance of the sufferers from rheumatism or arthritis who testified for respondents were first examined by Dr. Weisberg, who diagnosed the case of each. Dr. Weisberg testified that Peter Maretta had muscular rheumatism or fibrositis (Tr. 826); that Rhoda Lipsie had hypertrophic arthritis (Tr. 827); that Mrs. Ida Klaus had hypertrophic arthritis (Tr. 829); that Mrs. Ingeborg Larson was afflicted with hypertrophic arthritis, similar to the preceding case (Tr. 830 and 831); that King Hayes presented a case of gout (Tr. 833); that he was satisfied that every one of those persons had some form of arthritis (Tr. 838); that Arthur

Fremault suffered from hypertrophic arthritis (Tr. 839); the doctor's diagnosis of the condition of E. H. Carr was that Mr. Carr had hypertrophic arthritis, subdeltoid bursitis or both (Tr. 948); that Olive Mae Carr "was suffer-
179 ing from fibrositis or muscular rheumatism" (Tr. 952); as to Katherine Gott, Dr. Weisberg testified "My diagnosis was arthritis, type undetermined." (Tr. 954). Dr. Weisberg testified that in each instance he made his diagnosis on the basis of the facts apparent in the case of the particular patient involved; that he took into consideration not only the history of the case as related to him by the patient, but such definitely objective findings as crepitus, the presence of Heberden's nodes which are present only in arthritis (Tr. 841 and 842) and the like; that these could be found without x-ray (Tr. 841).

On rebuttal, Dr. Robinson, the Commission's witness, after describing his own practice in diagnosing the cases of patients presumed to be suffering from rheumatism or arthritis with a view to attempting treatment of those patients rather than as preparation for testifying in a law suit, was forced to admit that Dr. Weisberg, as an accredited diplomate in internal medicine was qualified to make adequate diagnoses of rheumatism and arthritis, that the diagnoses Dr. Weisberg made might be right, and that if they were correct, it wouldn't just be the result of an accident. When asked by counsel for respondents (Tr. 1129):

> "Q. Do I understand you to say that Dr. Weisberg might have been right (in his diagnoses) in some of these cases? Is that what you are saying, in effect?" Doctor Robinson answered:
>
> "A. It is entirely possible that he was right in some of these cases."
>
> "Q. And that it wouldn't be just an accident if he were right?"
>
> "A. Of course not."

180 Again, Dr. Robinson, after being reminded that Dr. Weisberg, like himself, was a diplomate in internal medicine, and asked whether an applicant for such recognition is not required to demonstrate to the Board evidence of his proficiency in diagnostic techniques and (Tr. 1132):

> "Q. Do I understand you to suggest that one might become a Diplomate without certain recognized abilities in the art of diagnosis?" responded
>
> "A. No. I don't want to indicate that."

Doctor Robinson further stated (Tr. 1132):

> "A. I do not think he (Dr. Weisberg) is wrong in nine cases, obviously. However, I think it depends very much on what you mean by diagnosis, sir."

Doctor Robinson then sought to distinguish between what he called a "clinical impression" and a "diagnosis" and testified further as follows (Tr. 1134):

> "Q. Am I correct in stating then that you called something you described an adequate diagnosis and something else an impression gained by a doctor? That is you defined one thing as an adequate diagnosis and another which you called a doctor's impression.
>
> "A. A clinical impression.
>
> "Q. Is it not a fact that the line of demarcation between various diagnoses and so-called impressions is a hazy one at best, a very nebulous one?
>
> "A. Unfortunately there are fields of medicine where one cannot go much farther than what we call a clinical impression • • •"
>
> "Q. Would you call what you have just described as an impression, a guess? Is that the same thing to your mind?
>
> "A. No."

This impresses respondents as unwarranted hair-splitting. Moreover, Dr. Robinson, when asked if he ever made
181 less than a complete diagnosis of a patient, replied (Tr. 1136 and 1137):

> "Regarding the without going through the complete diagnostic procedure, there are occasional exceptions. For instance, where you have a single finding which may be pathognomic—I mean it occurs in that disease and no other disease—of course, if you find that and make a diagnosis without going through the detailed procedure—(presumably such would be considered adequate diagnosis)".

It should be remembered that Dr. Weisberg had testified to having found such characteristic evidence of arthritis as Heberden's nodes in various of the patients he examined, a condition which does not exist in connection with any other disease. Such would seem, therefore, to fulfill the requirement of Dr. Robinson's exception hereinabove stated. Further, Dr. Weisberg testified (Tr. 957 and 958):

> "You mentioned that it was a brief examination. I'd

like to point out that that doesn't necessarily make it inadequate, not be a great deal, and there were a number of instances when I mentioned quite emphatically that it was my belief that individuals had hypertrophic arthritis. In those cases I feel very strongly that further evidence, the sort adduced by x-rays, would add nothing to the diagnosis. The clinical evidence was so clear-cut that in my mind there would be no doubt whatsoever regarding the nature of the disorder and it is my very distinct impression that the neophyte in the practice of medicine would have been compelled to make a similar diagnosis."

With respect to the particular individuals examined by Dr. Weisberg, he testified that while x-rays, sedimentation rate and urinalysis would be additional evidence, none of these would be necessary to establish a diagnosis in those particular cases (Tr. 959).

It seems unnecessary here to detail the testimony of the various users of "Imdrin". Many of them had pre-
182 viously taken aspirin, Anacin or other drugs without effect, then took "Imdrin" and experienced relief from the pains of rheumatism or arthritis, reduction of swelling, stiffness and redness and were able to move about in their daily routines in a manner before that time impossible.

Louis Jacobs of Cleveland, Ohio, the former patient of Dr. Wolpaw, testified that he took "Imdrin" and further (Tr. 879):

"Q. Did it help you in any way?

"A. Certainly.

"Q. How?

"A. I had no pain and I could walk. I could go places. I came to Chicago, sir, and take the Imdrin away and I won't come to Chicago." Further (Tr. 880):

"A. I told him (Dr. Wolpaw) Imdrin helped me and that it is wonderful."

He testified that aspirin made him sick (Tr. 882).

E. H. Carr testified that he took aspirin before he tried Imdrin, but the aspirin didn't seem to help him (Tr. 903); however, "Imdrin" just relieved me of that excruciating pain. He testified (Tr. 904):

"A. I couldn't raise my arm from the side. My wife had to help me with my coat.

"Q. Was that before you took Imdrin?
"A. Before.
"Q. After you took Imdrin?
"A. Well, it constantly got better and better until I don't have any effect at all.
"Q. What effect did it have in the area of your left thumb on your left hand?
183 "A. It disappeared entirely."

On cross-examination by counsel for the Commission, Mr. Carr further stated (Tr. 906):

"Q. And you got relief from pain, swelling and stiffness?
"A. Oh, yes, very much so."

Olive Mae Carr testified that she had taken aspirin for the pains all over the left side of her body "from the ear all the way down on this arm (Tr. 908 and 909) with no results, but that after taking "Imdrin" the results were "just wonderful". She testified, in part, as follows (Tr. 909):

"Q. Did you have, before you took Imdrin, did you have full mobility, could you move your arm around and your shoulder?
"A. Yes.
"Q. You could?
"A. But it hurt.
"Q. It hurt?
"A. It did.
"Q. After you took Imdrin the pain was eliminated?
"A. It was wonderful.
"Q. Did that happen immediately or over a period of time?
"A. Well, the first week it started to lessen and lessen, and now I don't have it all."

Mrs. Katherine Gott testified that "I took aspirin, anacin, and stuff like that, but they never did any good (for her pains of rheumatism or arthritis)" (Tr. 815). Regarding her use of "Imdrin" she testified (Tr. 916) "It has helped me wonderfully." She particularized:

184 "Before I started taking it my hands were swollen up and I couldn't even bend my fingers down like that. They'd be swollen so badly I couldn't make a fist out

of my hand * * * Now (after taking "Imdrin") I can bend my hands and fingers" and make a fist (Tr. 916).

She further testified that "the pain has lessened a lot." (Tr. 916).

Bernard Vinissky testified that he had doctored at the Mayo Foundation for many years and had been a patient of Dr. Rosenberg, the Commission's witness; that he had been subjected to much salicylate therapy for his gouty arthritis. Mr. Vinissky was asked how he felt after changing from aspirin and taking "Imdrin". He responded (Tr. 939): "The particular pain that impelled me to buy it had disappeared." He further testified:

> "I felt better after taking Imdrin than taking aspirin and with taking a smaller number of Imdrin pills than I was required to take of aspirin." (Tr. 941).

Peter J. Maretta, a user, was similarly asked (Tr. 763):

> "Q. Did you take anything for the pain?
> "A. Imdrin."

Further, he related (Tr. 763):

> "Well, I took three pills for the one day and it eased up my pain. Not only that but when I went to bed it made me sleep better at night and I kept taking them until the pain eased up and when I finished mostly all the bottle I didn't have any more pain. I don't have any more pain. I don't ever have any now * * * (the pain) hasn't come back at all."

Mrs. Rhoda Lipsie testified that she was bothered with a pain in her left hand (Tr. 776); that she took "Imdrin" until she had finished two bottles, at the rate of four tablets a day (Tr. 777). She answered questions of respondent's counsel as follows (Tr. 777):

185 "Q. Will you tell us what effect, if any, it had upon the pain?

"A. Well, it left me. The pain left completely.

"Q. Will you tell us when the pain was completely eliminated?

"A. I ran out of them and I thought I would wait, say, about three or four weeks before I would get more and I noticed I didn't have any pain and so I didn't buy any more for awhile.

"Q. Did you buy some more later?

"A. Yes, I did but I didn't use them four a day. I only took two a day.

"Q. How long did the pain last after you bought your further supply?

"A. Probably,—well shall we say just a couple of months?

"Q. When, specifically, would you say that your pain was completely eliminated?

"A. Six months ago."

On cross-examination, Mrs. Lipsie was asked by counsel supporting the complaint (Tr. 784):

"Q. When did that stiffness in the end joints of the forefinger and the little finger come, when did they come?

"A. At the beginning, it started right away, but it le. up. When I took the pills, (Imdrin), then it stopped, I felt now I could bend my fingers where before I couldn't."

Similarly, Mrs. Ida Klaus testified (Tr. 793):

"A. I came home and I seemed to be getting worse, it was pain, pain, pain my leg got numb all the way down to my ankle, I couldn't walk and that is the way I was suffering and suffering, that is all, and I took shots and pills and got no better.

"Q. What was it that you took in November?

"A. Your pills.

186 "Q. Imdrin?

"A. Yes.

"Q. And how did the pills affect your pain?

"A. It took it away.

On cross-examination, Mrs. Klaus was asked by the attorney for the Commission (Tr. 802):

"Have you ever taken any aspirin for this condition of yours? and she answered:

"Oh, yes, when I had that awful pain I used to take it. I would take a tablet or two and it wouldn't help me." and

"I took quite a few."

Mrs. Ingeborg Larsen testified (Tr. 809) that a friend gave her "Imdrin" and she tried it and it seemed to relieve the pain in her knees (Tr. 807). It is especially note-

worthy that this witness, in her testimony, volunteered spontaneously that (Tr. 810):

"A. It gave me relief.
"Q. It gave you relief?
"A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure."

King Hayes, another user, testified for respondents (Tr. 848):

"Q. Before you used Imdrin did you have pain in your feet?
"A. Before I used it?
"Q. Yes.
"A. Sure I would have pain in my feet.
"Q. What did it do with regard to the pain, if anything?
187 "A. It took the pain and swelling out.
"Q. Then you went back to work? (Tr. 849)
"A. Yes.
"Q. During this time (before taking Imdrin) you had been unable to work, is that right?
"A. Oh, sure."

Arthur Fremault testified for respondents that he had had pains in the lower back, the full lower back (Tr. 856): that after taking Imdrin, he had said: (Tr. 858)

"'It's wonderful. You are advertising your medicine. It is wonderful. I have got no pain any more.' Yes, it is gone."

Marjorie Johnson Marchena, for respondents, said (Tr. 987): "I had muscular pains in my body * * * In my shoulders, in my arms, hands and my lower limbs." She testified that neither a liquid medicine nor capsules prescribed by her physician provided any relief (Tr. 988). She further testified that about a week after she commenced taking "Imdrin", six a day, she noticed that her pains were diminished (Tr. 990); that she used six tablets a day for about three weeks "To the time that I really felt relief and found out the swelling from my limbs were disappearing. The swelling was in the feet and knees and also the hands (Tr. 991). She stated (Tr. 992) that "My pains were all gone. And the swelling; yes." She did not move from her basement apartment until 1950, but her

pains were relieved and her swelling reduced three weeks after she commenced taking "Imdrin" (Tr. 995) about March, 1949 (Tr. 993). She testified that she had previously taken Dolcin and Anacin without effect; that she was an ordained Methodist minister (Tr. 1003).

188 Mrs. Betty Raaberg testified that "I couldn't go down the stairs and bend the knee here" * * * "I had such terrible pains. (Tr. 1005); that "While I lie in my bed before I took the Imdrin, I couldn't have any blankets to touch my knee (Tr. 1006) but that "Then before supper I took two ("Imdrin") again, and that was the first night for a long time I could have the blankets—"(Tr. 1006). She said that she used the blanket without pain "even the first night." She was then asked:

> "Q. How long after that first day that you used Imdrin were you able to get downstairs where you previously were unable to?" and she answered
>
> "A. I would say two days."

She testified further that she had tried aspirin. "They don't help me" (Tr. 1008)

As to Robert S. Greenfield, the last user witness scheduled to testify in the New York hearings, it was stipulated by counsel that if called, Mr. Greenfield would testify stating the history which he gave to Dr. Miller who examined him and which Dr. Miller had previously testified to in these hearings, including Mr. Greenfield's aches and pains and conditions, the time and manner and use of "Imdrin" and the description of his condition thereafter (Tr. 1068). Regarding the testimony so incorporated in the record, Dr. Miller had testified that Mr. Greenfield had a pain in his left knee in 1947; that he couldn't go to the movies, drive his car or sit anywhere for any length of time; that a year and a half after the onset of the pain, he took Imdrin as directed and in 48 hours had relief, slept through the night after taking the medication for two days, and

189 that his relief was complete after he had taken 100 tablets (Tr. 1040, 1041 and 1042); that three to four months ago, he developed left shoulder pain which a physician diagnosed as bursitis; that two months later he started Imdrin and after a few days of taking the drug, he was much improved (Tr. 1043). Dr. Miller's diagnoses of bursitis and neuritis have already been mentioned on page 21 of these proposed findings.

These Respondents except to the findings of the Hearing Examiner contained in said Paragraph Nine of his Initial Decision, that persons forced by rheumatism or arthritis to discontinue their normal habits of life or their regular occupations, will not be enabled to taking the drug preparation "Imdrin" to resume such habits or occupations. Nearly every one of the users of "Imdrin" to whose testimony the Commission was hereinabove referred, testified specifically that before taking the product he had been unable to pursue his or her regular business or occupation or had been unable to continue his normal habits of life. Many of these witnesses stated that they could not work, could not walk down stairs, could not sit or lie comfortably in bed and could not travel until they had taken "Imdrin."

But beyond the matter of the admissibility of this evidence of real, live users of "Imdrin" who testified, to one accord, as to the beneficial effects of the product, in their several experiences with its use, lies the question of the relative weight to be ascribed to this testimonial evidence. It cannot be denied that insofar as capacity to observe is concerned, these matters are completely unlike the opinion evidence offered by the Commission's "experts," in that they are the subject of first hand factual information known and experienced by the sensory perception of the witness himself. As such, they should be most convincing. 190

Respondents recognize that the weight to be given facts and circumstances admitted as well as inferences reasonably to be drawn from them is for the Commission. *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63. That the Courts have held that the appraisal of evidence and inferences is for the Commission is well known. *Gulf Oil Corporation* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106 (1945). But where the findings of the Commission, *as to facts and inferences*, have been regarded as wrong by the courts, they have never hesitated to reverse such findings. *Kidder Oil Co.* v. *Federal Trade Commission*, 7 Cir., 117 F. 2d 892 (1941), *International Parts Corporation* v. *Federal Trade Commission*, 7 Cir., 133 F. 2d 883 (1943); *Folds* v. *Federal Trade Commission*, 7 Cir., 187 F. 2d 658 (1951) and many others. So the questions of whether or not an expert testifying for the Commission needs clinical experience with the product, before he can testify as to his opinion concerning its

efficiency, such as was raised in *J. E. Todd, Inc.* v. *Federal Trade Commission*, 145 F. 2d 858 and whether or not the Commission may resolve conflicts in the testimony of experts, such as was decided in *Alberty* v. *Federal Trade Commission*, 118 F. 2d 669 are not germane to our present consideration. Our present inquiry is only: What weight *should* the Commission assign to this evidence?

191 At the outset, Respondents believe it can be said that as a general proposition factual evidence should weigh heavier and have more convincing power than opinion evidence. It has been held that "a medical opinion cannot be arbitrarily disregarded, but on the other hand it cannot stand in the face of actual facts to the contrary." 32 Corpus Juris Secundum, p. 397, § 569, *Hamilton* v. *Fay*, 128 A. 837, 283 Pa. 175, *Stewart* v. *Pioneer Pyramid Life Insurance Co.*, 180 S. E. 889, 177 S. C. 132.

It is for that reason, *inter alia*, that Respondents have found it necessary to except to the refusal of the Hearing Examiner to find that pain is completely subjective and is incapable of definition and classification as to degree of pain suffered. It is assumed that the Hearing Examiner so refused to find in accordance with Respondents' proposal, because he regarded the unanimous testimony of all the medical witnesses on both sides that pain is completely subjective (Tr. 241, 240, 345, 348, 534, 579, 580 and 686) as "immaterial". Respondents cannot agree that this proposition is either immaterial or unsupported by substantial evidence. We think it self-evident and most persuasive that if the issue to be determined is whether or not pain is relieved and pain itself is completely subjective, the user will himself know better whether it has been relieved than the physician will know that it couldn't be, and if the layman who takes the medicine says he doesn't hurt any more, it is submitted that he is to be believed and not the doctor who says: "That can't be. You must hurt!"

192 Professor Edmund Morgan, the world renowned authority on Evidence has this to say on the subject in *Cases and Materials on Evidence*, Morgan and McGuire, 2nd Edition (1951), page 131, where in considering the views of Mr. Justice Holmes in *Reeve* v. *Dennett*, 145 Mass. 23, 28, 11 N. E. 938, 943-944 (1887), he recites:

> "(this) was an action for alleged fraud wherein it was material to establish whether or not a compound called

naboli, which D, a dentist, claimed to have invented, reduced the pain of dental operations. D called a number of his patients who testified that operations upon their teeth by D, using naboli, were practically painless, whereas similar operations before had been very painful. * * * If a dozen patients should testify that, when the defendant used his naboli, he filled their teeth without hurting them, and that he hurt them a good deal when he did not use it, supposing the testimony to be believed, and not to be explained by fancy and a general disposition to think well of new nostrums, it would go far toward proving that naboli had some tendency to deaden pain. Indeed, the same thing is true in a less degree, if the painful operations were by another hand."

Again, in *Urbeteit* v. *United States*, 5 Cir., 164 F. 2d 245, 247, 248 (1947), which was a suit to condemn as misbranded a machine invented and sold by Dr. Urbeteit for the diagnosis of certain diseases including arthritis, the Court said:

"Dr. Urbeteit vigorously contended that all he had said in 'The Road to Health' (his brochure) was true. * * * He had 30 of his patients present whom he offered as witnesses to the benefits they had received, many of them being those mentioned in 'The Road to Health'. The Judge refused to hear them, on the ground that being laymen they could not testify what was the matter with them and consequently could not say what they were relieved from and that the diagnoses testified to by Dr. Urbeteit could not be accepted because he rested them on the use of his machine which the Government's witnesses, who were men of high standing in medicine and in the electrical arts, 193 had testified *could not* (emphasis supplied) do what Dr. Urbeteit claimed. These rulings were error. * * * The most eminent physicians and scientists have in the past erred in their *opinions*, and opinions generally must yield to well proven contrary facts."

See also *Standard Oil Co. of New York* v. *Federal Trade Commission* and *Texas Co.* v. *Same*, 2 Cir., 273 Fed. 478, 482 (1921) where it was held that the Commission might not infer that petitioners' system tended toward monopoly

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and constituted unfair competition as against the proved fact that petitioners' system had not restricted competition.

And as was heretofore pointed out earlier in this Brief, it was held in *Gelb* v. *Federal Trade Commission*, 2 Cir., 144 F. 2d 580, 582 that where an expert for the Commission testified to his opinion from analysis of the product that it *could not* "recondition" the hair, where many witnesses affirmatively stated from experience that it *did* and not a single witness who testified from experience in using the preparation *denied that it did* leave the hair "reconditioned" this expert's inference to the contrary, based solely on his chemical analysis, without experience in the use of the preparation cannot be regarded as substantial evidence that the product is incapable of reconditioning the hair.

It is accordingly suggested that the Trial Examiner unrealistically and unfairly mis-evaluated the evidence adduced herein. In electing to be bound by the disputed testimony of the Commission's medical experts, he chose to ignore not only all of Respondents' medical evidence that "Imdrin" could and would relieve the pains of rheumatism and arthritis but also that of real, live users
194 afflicted with these diseases who testified uniformly that they had. He assigns no reason for so doing and his action can be only regarded as arbitrary.

5. The Terms of the Order to Cease and Desist Proposed by the Hearing Examiner in His Initial Decision Are Unjust, Inequitable, Unconscionable and Oppressive and Are Arbitrarily and Completely Unwarranted by the Evidence.

Respondents have excepted to the order to cease and desist proposed by the Hearing Examiner for the general reason, as hereinbefore pointed out that no order to cease and desist is indicated or proper, since Respondents have not made any of the misrepresentations laid to their charge. It is neither usual nor lawful to require persons to cease and desist from doing any act which they are not shown to be doing at the time in the belief that they may do so in the future. It is necessary, first, to show a present violation of the Act. But particularly do Respondents except to the provisions of such proposed order which would require them to cease and desist from representing

to the public that their product "Imdrin" will provide other than temporary and partial relief from minor aches and pains attendant on rheumatism and arthritis.

Respondents, in that behalf, except to the refusal of the Hearing Examiner to find that most cases of rheumatism and arthritis are ambulatory and mild. (Tr. 240, 647, 654, 663, 706, 1142, 1195, 1207, 516 and 526). We cannot
195 agree with the observation of the Hearing Examiner that this proposal is indeterminable. We believe the evidence without question bears out this fact. Its significance lies in a realization of the fact that Respondents' advertisements are directed mainly to this group of people, most of whom would be suffering from what the Hearing Examiner characterizes as such minor aches and pains and would expect only temporary relief from those symptoms.

However, as was pointed out in the case of D. D. D. Corporation *vs.* Federal Trade Commission, supra, to require Respondents to particularize in their advertising, in manner as the Hearing Examiner proposes, would be unduly oppressive and unnecessarily explicit. It was not intended by the framers of the Federal Trade Commission Act that its operation be to put producers out of business or unduly to hamper them in the legitimate exercise thereof.

Conclusion.

The Commission is respectfully reminded that there has not been a scintilla of evidence to show that the purchasing public has been defrauded or injured by "Imdrin" advertising. On the contrary, it has done untold good. It is a serious matter to deprive Respondents of their rights legitimately to advertise, which would be the inescapable result
of approval of the Hearing Examiner's findings and
196 order by the Commission. Accordingly, Respondents respectfully request that the Hearing Examiner be reversed.

Respectfully submitted,
Frank E. Gettleman,
Arthur Gettleman,
Edward Brodkey,
Attorneys for Respondents.

Chicago, Illinois, February 21, 1952.

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197 (Letterhead of Frank E. & Arthur Gettleman,
Chicago 3, Illinois.)

REQUEST FOR ORAL ARGUMENT.

(Received Federal Trade Commission Feb 27 1952
Secretary.)

February 21, 1952

Federal Trade Commission
Washington 25, D. C.

Attention: Mr. D. C. Daniel, Secretary

Re: Docket No. 5691
Rhodes Pharmacal Company, Inc., et al.

Gentlemen:

Enclosed please find twenty copies of Respondents' Brief, constituting their appeal from the Initial Decision of the Hearing Examiner filed herein, pursuant to Rule XXIII of the Rules of Practice of the Federal Trade Commission.

Kindly file these Briefs, the original of which is signed, in our behalf, and advise us of the date on which this matter is set for oral argument.

Thanking you for all past courtesies, we are

Yours very truly,
Frank E. & Arthur Gettleman,
By Edward Brodkey.

EB:rj
encs.

198 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE OPPOSING BRIEF.

(Received Mar. 7 1952 Secretary.)

Comes Joseph Callaway, counsel supporting the complaint, and moves for extension of time from March 18, 1952, to April 18, 1952, within which to file opposing brief, and for reason says:

Other Commission matters assigned to counsel, many of them with instructions to expedite their handling, have prevented his doing any work on the opposing brief to date. The mimeographing section advises that approximately 10 days or 2 weeks will be required to mimeograph the brief after it is prepared and typed. In preparation of the opposing brief, a thorough review of the record including approximately 1200 pages of technical testimony is necessary. It is, therefore, believed that to properly prepare opposing brief, have it typed and mimeographed will require the extension of time requested.

Respectfully submitted,
Joseph Callaway,
Counsel supporting the Complaint.

March 7, 1952.

Approved:
William M. King,
Assistant Chief,
Division of Litigation.

199 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn.

* * (Caption—5691) * *

ORDER EXTENDING TIME FOR FILING OPPOSING BRIEF IN SUPPORT OF THE ALLEGATIONS OF THE COMPLAINT.

This matter coming before the Commission upon the motion of counsel supporting the complaint for an extension of time from March 18, 1952, to April 18, 1952, within which to file opposing briefs in support of the allegations of the complaint, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises;

It Is Ordered that the time within which opposing brief may be filed in support of the allegations of the complaint be, and the same hereby is, extended from March 18, 1952, to April 18, 1952.

By the Commission.

D. C. Daniel,
Secretary.

(Seal)

Issued: March 17, 1952.

202 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

OPPOSING BRIEF.

(Received Apr. 11, 1952. Secretary.)

I. Statement.

This proceeding involves the dissemination of advertising of a medicinal preparation called Imdrin, alleged in the complaint and found by the hearing examiner to be false and deceptive and in violation of section 12 of the Federal Trade Commission Act. The corporate setup and its control by the individual respondents is admitted. Dissemination of the questioned advertising as, and for the purposes alleged in the complaint is admitted. The formula and directions for use of the preparation and its sale and distribution as alleged in the complaint are admitted. Thus the issues before the Commission are narrowed to 2 points. (1) What does respondent represent by the admitted advertising? (2) What is the therapeutic effect of respondents' preparation?

II. Argument.

The argument made in the appeal brief is based upon 5 points which are as follows:

1. Each and every finding of the trial examiner must be supported by substantial evidence, which is substantial in a legal sense.
2. There must be a basis in substantial evidence for the findings of the trial examiner underlying each issue in the case.
3. There is no substantial evidence in the record which will reasonably support the finding of the trial examiner that respondents' advertising complained of means that "Imdrin" is a newly discovered drug, that it possesses therapeutic properties curative of rheumatic and arthritic conditions, that it is offered as a treatment for same and that it is not offered only as

an analgesic and antipyretic for the alleviation of the pains of rheumatism and arthritis.

203 4. The weight of probative evidence shows that respondents' representations concerning "Imdrin" are true, real, factual and substantial.

5. The terms of the order to cease and desist, proposed by the hearing examiner in his initial decision are unjust, inequitable, unconcsionable and oppressive and are arbitrarily and completely unwarranted by the evidence.

Counsel supporting the complaint has no quarrel with the first two points set up by respondents, as general statements of law applicable to the decision of Commission cases in the Circuit Courts of Appeal. In proceedings before the Commission the true rule is understood to be that the findings on which an order is based must be supported by a preponderance of the credible evidence. With a similar change in the rule, the last three points in respondents' brief will be answered in the order presented by respondents.

A. The Hearing Examiner's Findings as to Respondents' Representations Made Directly and By Implication Through the Advertising in Evidence Are Supported By a Preponderance of the Credible Evidence.

The hearing examiner's findings attacked by respondents under point 3 of their brief are as follows:

It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin" when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions;

2. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life, and their regular occupations;

5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

204 It is agreed that respondents have not used the word "cure" in their advertising. However, it is very well recognized that a cure may be represented without use of the word itself, if the overall impression created by the advertising is to that effect. *Donaldson* v. *Reed Magazine Co.*, 333 U. S. 178, 188; *Aronberg* v. *Federal Trade Commission*, 132 F. (2d) 165.

The Hearing Examiner had before him not only the advertisements quoted in the initial decision but all the advertisements in evidence. The ones quoted were merely picked out by the hearing examiner as typical. He also had before him the testimony of Dr. Rosenberg as to what his patients would understand from these advertisements, the testimony of Mr. Brieman as to the result of his survey and the testimony on this point of two of respondents' user witnesses King Hays and E. H. Carr.

Respondents contend on page 20 of their brief that the hearing examiner ignored the testimony of both Dr. Rosenberg and Mr. Brieman in making the findings attacked under point 3 of respondents' brief. They do not object to Dr. Rosenberg's testimony being ignored but state:

> "There is no suggestion in the Initial Decision that the Hearing Examiner has taken Mr. Brieman's testimony and finding into accounts. If it was the intention of the Hearing Examiner to ignore this testimony, respondents, we believe, have a right to know why. It was not contradicted by any other evidence in the record."

It is submitted that the record shows that both Dr. Rosenberg's and Mr. Brieman's testimony was taken into account. Their testimony was a part of the record, and

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the preamble to the initial decision shows that the hearing examiner "having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order." (Underscoring mine.)

It is further submitted that the Commission Rules and the Administrative Procedure Act do not contemplate that the hearing examiner shall annotate his initial decision to include a citation to a particular page and line of the testimony for each statement made.

The statement in respondents' brief quoted above that Mr. Brieman's testimony "was not contradicted by any evidence in the record" is also challenged.

1. Mr. Brieman's Testimony.

No witness pointed a finger at any particular statement of Mr. Brieman and said that it was untrue, but the cross-examination of Mr. Brieman revealed:

205 (1) He could not say that the answers he received reflected consumer reaction of the people to whom the Imdrin advertisements were addressed. (R. pp. 740, 741.) This was essential. See *Ford Motor Co.* v. *Federal Trade Commission*, 120 F. (2d) 175, 182;

(2) The questions he asked the persons interviewed, as to the meaning of the advertisements shown them were in effect trick questions in that they were contrary to the actual wording of the advertisements (R. pp. 743-745);

(3) Mr. Brieman's own reaction to the advertising shown those he interviewed was contrary to what he says was the reaction of a majority of those interviewed. (R. pp. 746, 748, 749.);

(4) The photostatic copies of the advertisements exhibited to the persons interviewed did not show the pictures of persons in bed and in wheel chairs as contrasted to those playing golf and bowling, which were shown in the actual advertisements. (R. p. 750.);

(5) Mr. Brieman's report of his interviews was limited in that he did not report the actual statements made by those interviewed but put his own interpretation on what they said, by classifying their answers in only 2 categories, "Pain Relief" and "Cure and Treatment." (R. p. 754.)

Mr. Brieman's report does not show any different shades of meaning in the answers given. For instance, when he asked a person being interviewed if the advertising meant "Pain Relief" that person could very well say "yes" without meaning that pain relief was all the advertisement meant to him, and yet the answer would go in the "Pain Relief" column.

In spite of all these defects in Mr. Brieman's survey and his report of it, he found that to 9% of those interviewed the advertising shown them meant that Imdrin was a treatment and cure for arthritis and rheumatism (R. pp. 731, 732). The record shows that there are 7,000,000 sufferers from arthritis in this country. (R. pp. 731, 732.) Nine per cent of that number is 630,000. If the reaction to the advertisements by prospective purchasers, that is those suffering from some form of arthritis, is similar to those persons interviewed by Mr. Brieman (which has not been shown even under his testimony), 630,000 prospective purchasers would think that respondents' advertisements meant a cure for them. This is quite a sizeable group, a substantial portion of the purchasing public, as alleged in the complaint, who are deceived by respondents' advertising and who deserve protection at the hands of the Federal Trade Commission.

2. The Advertising Considered By Itself.

Commission's Exhibits 12, 15, 16, 17, 18, 19 and 20 bear the heading in large type "Amazing New Discovery for Rheumatism, Arthritis." Mr. Brieman himself testified that if an advertisement said "Amazing New Discov-
206 ery for Diabetes" he would understand that it was an adequate treatment for diabetes (See p. 746 where the question is asked and p. 749 where it is answered). Such understanding of the meaning of this language was supported by Dr. Rosenberg whose testimony will be discussed later. In addition to this, the court has held that the use of the word "for drunkenness" is equivalent to saying that a drug is a "cure, mitigation, treatment or prevention of drunkenness." *U. S.* v. *11¼ Dozen Packages,* 40 F. Supp. 208, 210. A representation that a medicine is "for" or a treatment for is equivalent to labeling it "as a cure or remedy." *Hall* v. *U. S.,* 267 F. 795, 798.

Respondents' advertising sets forth certain symptoms

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as indicating the presence of some form of arthritis. The advertising then says that Imdrin will relieve those symptoms. For instance in Comm. Exs. 12, 15, 16, 17, 18, 19 and 20, in the right-hand column under the heading, "Where Rheumatism Strikes and How to Detect It," the statement is made "All forms (of rheumatism and arthritis) cause pain, frequent swelling, and possible loss of function of joints."

This is only another way of saying that rheumatism in all its forms may be detected by pain, swelling, and stiffness, or loss of function of joints. Then when Commission's Exhibits 2, 3, 4, 5, and 6, say that Imdrin "stops the pain," "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night," "prolonged freedom from pain," "for them the aching joints and muscles are a thing of the past," this is only another way of saying that Imdrin will do away with the symptoms which are present in all forms of arthritis and rheumatism and hence cure it.

Commission's Exhibit 13 is addressed in the left-hand column to sufferers from rheumatism, arthritis, neuritis, sciatica, gout, and neuralgia. Sufferers from bursitis and fibrositis are included among those addressed in Commission's Exhibit 37.

Those who have suffered from any form of arthritis for 20 years are promised a "happy comfortable life," and a "more normal active life" (Comm. Exs. 19, 20). The least they could infer from these promises is that the progress of the disease from which they were suffering would be arrested.

Another implication of Imdrin arresting the progress of the disease is contained in the following statement, taken from Commission's Exhibit 37 under the heading "No more Blue Days":

> "In addition, the mental depression that sometimes resulted from therapy in these ailments was not found to be of major significance, when Imdrin was used as indicated. 'Blue days' disappeared and patients resumed their usual cheerful outlook on life. This is of utmost importance, since there seems to be a definite relationship between the onset of arthritis and mental condition." (Underscoring supplied.)

207 In an advertisement addressed to sufferers from arthritic condition, the following, also taken from Commission's Exhibit 37, could only mean that the underlying cause of their condition is an inadequate functioning of the vital enzyme systems of the blood and bones, and that a restoration of such functioning, and therefore a removal of such underlying cause, is promised by the use of Imdrin:

> "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate, have been combined with other ingredients for maximum effect."

Other indirect promises of a cure are contained in the two horizontal rows of pictures used in Commission's Exhibit 20 and in other exhibits. Although the subheading above the first row of pictures referred to, only talks about relief of pain and suffering, these pictures of invalids in the first row, followed by the picture of the woman bowling and the man playing golf, are a clear implication that by taking Imdrin, the invalids pictured in the first row were enabled to bowl and play golf. Nor is the implication in any manner offset by the words "Posed for by Professional models" in small type, following the asterisk, further down in the advertisement.

Moreover, the general tenor of the newspaper advertisements, the use of the words as "amazing new discovery," comparison with "wonder-working drugs, Sulfa and Penicillin," statements that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling in the joints" and that by using Imdrin, sufferers from arthritic conditions can "live happy, comfortable lives again" even though they may have "suffered, waited and hoped for 20 years,"—the tenor of these advertisements is calculated to deceive even those who have had arthritic disorders for a long time, even those who have made the round of various doctors' offices, without being cured, those whose "cases (are) deemed almost hopeless."

Since these advertisements represent that Imdrin will arrest the progress of, remove the underlying cause of, and cure the various kinds of arthritis and rheumatism, the preparation is also certainly represented as an adequate, effective, and reliable treatment for such conditions. It might be possible under some court decisions to represent a preparation as an adequate, effective, and reliable treat-

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ment, without representing it as a cure, but there are no court decisions to the effect that a cure is not an adequate treatment. Such would be an absurdity.

For the Commission to be sure that all the conditions enumerated in the hearing examiner's findings are included in the advertisements, Commission's Exhibit 1 is addressed to sufferers from arthritis, rheumatism, sciatica, and neuritis. Victims of neuritis, sciatica and neuralgia are particularly appealed to in Commission's Exhibit 12. Victims of gout are among those particularly addressed in Commission's Exhibit 13. Victims of bursitis and
208 fibrositis are also appealed to in Commission's Exhibit 37. Of course, all of the advertisements are addressed in general to sufferers from arthritis and rheumatism, without distinction as to kind, and without regard to cause.

From what has been said above, the advertisements themselves justify the first finding of hearing examiner about which respondents complain, that is the finding that respondents have by their advertising represented that Imdrin taken as directed constitutes an adequate effective and reliable treatment for, will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictins.

The same advertising, of itself, justifies the other 4 findings of the hearing examiner as to what respondents have represented by such advertising. At the risk of being repetitious, these will be pointed out, one by one.

The next finding of the hearing examiner to which respondents' object is that through the advertisements in evidence respondents have represented, directly and by implication:

> "2. That the drug preparation 'Imdrin' when taken as directed constitutes an adequate effective and reliable treatment for the symptoms and manifestations of all the above named diseases or afflictions and will afford complete, permanent relief from the aches, pains and discomfort thereof."

First let's consider again what respondents represented to be the symptoms and manifestations of the various kinds of rheumatism and arthritis.

"Where Rheumatism Strikes and How to Detect It.

"Rheumatic and arthritic pain and inflammation

strike any of the areas indicated on the above chart (see Arrows). But these diseases have many forms and symptoms. All forms cause pain, frequent swelling and possible loss of function of joints * * *" (Comm. Exs. 12, 15, 16, 17, 18, 19, and 20).

Commission's Exhibit 2, one of the radio advertisements starts off:

"If the misery of rheumatic and arthritic pains have been driving you to distraction—if you are plagued day after day with tormenting aches, swelling and stiffness * * *" (Underscoring supplied).

Commission's Exhibit 4, another radio advertisment carries out the same theme. We therefore have respondents representing that pain, stiffness and swelling of the joints are the common symptoms of all forms of arthritis and rheumatism. We then have these same radio advertise-
209 ments telling the sufferer that Imdrin "stops the pain," "stiffness and swelling disappear, often over night." (Comm. Exs. 2, 3 and 4). The newspaper advertisements say that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling. (Comm. Exs. 12, 13, 14, 15, 16, 17, 19 and 20). Commission's Exhibit 37 says 'Imdrin' is a product scientifically designed to aid in the relief of nagging aches, pains, stiffness, and swelling of arthritis and related illnesses * * *. It will be found that Imdrin gives prompt, efficacious and long-lasting relief from the symptoms of the arthritic state, when used as recommended."

Thus we have Commission's Exhibit 37 saying in so many words that Imdrin is an adequate, reliable and effective treatment for the symptoms of arthritis. We also have the other advertisements saying that the common symptoms of all forms of rheumatism and arthritis are pain, stiffness and swelling and that Imdrin is an effective treatment for these symptoms.

Respondents have also, through the advertising in evidence, represented that Imdrin will afford complete and permanent relief from the aches, pains and discomforts of all forms of arthritis and rheumatism. In the phrase "stops the pain," "stop" "means to interrupt or prevent the continuance or occurrence of"; to "cause to cease" according to Webster's New International Dictionary, 2nd

Edition,—not to reduce the pain or to lessen it, but to take it away altogether. If "stiffness, and swelling disappear," as the advertisements say, they are gone, not merely reduced or lessened.

If, for arthritic sufferers, the "aching joints and muscles are a thing of the past," as the advertisements say, they are permanently gone.

> "Remember it is much better to continue taking Imdrin some time after all symptoms have disappeared. This will aid in preventing the recurrence of pains and stiffness.' (Comm. Ex. 37.) (Underscoring supplied.)

If all symptoms have disappeared, that is complete relief and if the recurrence of pains and stiffness are prevented, that is permanent relief.

Respondents do not seem to attack the third or the 4th finding of the hearing examiner as to what they have represented, but attempt to justify the use of the phrase "Remarkable, Amazing, Sensational New Discovery of Scientific Research," and to justify the representation that Imdrin will enable the victim of arthritis to resume their normal habits of life and regular occupations. The attempt to justify these representations will be dealt with later in this brief.

In regard o the 5th finding by the hearing examiner as to what respondents have represented in their advertising, respondents on page 26 of their brief make the following statement:

210 "It is submitted that there is nothing in the record supporting the Hearing Examiner's finding that 'Imdrin' ads represent that the product will correct any disturbance of the vital enzyme systems of the blood and bones."

In answering this statement, it is only necessary to quote from Commission's Exhibit 37 which reads in part as follows:

> "For aid in insuring adequate functioning of the vital enzyme systems of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with other ingredients for maximum effect."

Thus all of the hearing examiner's findings as to what respondents have represented in regard to Imdrin are justified by the advertisements themselves. However, respondents make the point that where there is other evidence in the record as to the meaning of the advertisements, the Commission is not justified in ignoring it. The other pertinent evidence in the record on this point, not heretofore discussed is the testimony of Dr. Rosenberg and two of respondents' user witnesses King Hays and E. H. Carr.

3. Dr. Rosenberg's Testimony as to What Patients Suffering from the Various Forms of Arthritis Would Understand from Respondents' Advertising.

Dr. Rosenberg was qualified to interpret the meaning of the various advertisements as they would be understood by sufferers from arthritic and rheumatic disorders. The exact course followed in qualifying him to give this testimony was approved in *Stanley Laboratories* v. *Federal Trade Commission*, 138 F. (2nd) 388. See also *Charles of the Ritz* v. *Federal Trade Commission*, 143 F. (2nd) 676. His qualifications as an expert in the treatment of arthritic disorders begin on page 217 of the record and run to the middle of page 238. It portrays the picture of a learned physician the larger part of whose life has been spent in actively treating and daily coming in contact with persons suffering from arthritic and rheumatic disorders. Beginning on page 258 through page 263 he qualifies himself as being in a position, from the contacts, enquiries and discussions with his patients to say what respondents' advertising means to persons suffering from arthritic and rheumatic disorders. His testimony from pages 283 through 312 support the hearing examiner's findings as to what respondents represented through the advertising in evidence.

4. The Testimony of King Hays and E. H. Carr.

The testimony of Mr. King Hays and Mr. E. H. Carr on cross-examination bears out Dr. Rosenberg's interpretation of the advertising. These were two of respondents' user witnesses whose testimony is shown in the record at pages 844 to 845, and pages 902 to 906, respectively. It must be borne in mind that respondents' advertising directed to arthritic sufferers states that "all forms (of rheuma-
211 tism and arthritis) cause pain, frequent swelling and possible loss of function of joints." (Com. Exs. 12, 15,

16, 17, 18, 19 and 20). Other advertisements stated Imdrin "stops the pain," "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night." Dr. Weisberg, respondents' expert, said Mr. King Hays had gout which is a form of arthritis (R. p. 833) and that Mr. Carr had hypertrophic arthritis or subdeltoid bursitis, both of which are forms of arthritis (R. p. 948). Mr. Hayes said he had pain, stiffness, and swelling; that if he could find something to take away the pain, stiffness, and swelling, he would think he was cured (R. p. 855). Mr. Carr said the same thing (R. p. 906).

In other words, through the mouths of these witnesses of respondents is confirmation of the fact that representations addressed to rheumatic sufferers that Imdrin "stops the pain," "causes stiffness and swelling to disappear," is a representation of a cure. They had arthritis. They had pain, stiffness, and swelling. They were seeking just what respondents' advertisements promised, and thought if they could get what respondents' advertisements promised, they would be cured.

Thus, the advertisements themselves, the testimony of Dr. Rosenberg and the testimony of Mr. Hays and Mr. Carr supports the finding of the hearing examiner as to what respondents have represented in their advertising. The testimony of Mr. Brieman in regard to his survey does not contradict such finding, because it was not a fair sampling of the reaction of the sufferers from arthritic conditions to respondents' advertising.

B. The Weight of Probative Evidence Shows That Imdrin Will Not Do What Respondents Advertise That It Will Do.

It is believed that the overwhelming evidence in the record on the point supports the hearing examiner's finding that Imdrin taken as directed does not constitute an effective and reliable treatment for, will not arrest the progress of or correct the underlying causes of any form of rheumatism or arthritis including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis and that said preparation will not cure any forms of such diseases or afflictions.

Respondents do not contend that Imdrin will do these things. None of their expert witnesses testified that Imdrin would do these things, and the testimony of Dr. Rosenberg, Dr. Barton, Dr. Wolpaw and Dr. Graef is squarely

to the effect that Imdrin will not. Dr. Rosenberg's testimony on this point is summed up on pages 334 to 336. Dr. Barton's testimony on this point is summed up on pages 430 to 433. Dr. Wolpaw's testimony on this point is summed up on pages 518 to 520. Dr. Graef's testimony on this point is summed up on pages 204 to 208. All of these men were the best possible qualified experts in this particular field.

212 Therefore respondents' appeal from the inhibitions contained in (a) and (b) of the order must stand or fall on the construction or interpretation of the advertising. In this connection, attention is called to paragraph 7 of the findings in the initial decision where the hearing examiner finds what is necessary to provide an adequate effective or reliable treatment for the various types of ailments included under the general terms "arthritis" and "rheumatism." Respondents do not seem to have taken exception to this finding.

Under the 4th point in their brief, which will be answered here, respondents' first attack is that the evidence does not support the finding in paragraph 9 that:

> "The drug preparation 'Imdrin' however taken will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation 'Imdrin' however taken will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief the drug preparation Imdrin cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis or bursitis."

Respondents rely to a large extent upon the testimony of 14 user witnesses. The complaint alleges and the answer admits that respondents' sales for the *last quarter* of 1948 was in excess of $250,000. This is over $1,000,000 annually. There is nothing in the evidence to indicate that respondents' sales of Imdrin have decreased. And yet respondents would have the Commission to overturn the opinion

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evidence of the learned experts in this field by the testimony of these 14 users. If all of the 14 had been suffering from some form of arthritis, which is exceedingly doubtful, and all of them had miraculous recovery after taking Imdrin that would prove nothing. Respondents' own expert Dr. Miller stated that none of the user witnesses he examined had advanced cases, and that except in advanced cases, there were frequently remissions that lasted for months. (R. p. 1054.) The thought is inescapable that it would not be improbable to find 14 cases of arthritis, or many more for that matter, where the taking of Imdrin coincided with a remission, in view of the millions of dollars worth of preparation sold by respondent.

In offering all but one of these 14 witnesses, respondents were confronted with the proposition of having to have some physician examine them after their condition had cleared up, and say that the person had formerly had arthritis. If they had arthritis symptoms at the time they testified, they were not worth anything as witnesses to respondent because they had been taking Imdrin and Imdrin is supposed to clear up such symptoms. If they previously had been suffering from something other than ar-
213 thritis, the fact that their symptoms may have cleared up after taking Imdrin is not a testimonial for Imdrin in relieving arthritis symptoms. The best respondents could make out of the current doctor's examination of the user witnesses was the statement used by Dr. Miller in reference to Mrs. Marchena that he had the impression that she had had mild osteoarthritis (R. p. 1058). Stated another way, the most a doctor could say from examination and history after the condition had cleared up, was as stated by Dr. Robinson, "a clinical impression," (R. p. 1134), that the person examined had formerly had some form of arthritis. Dr. Robinson explained that this was far from an accurate diagnosis.

Respondents on page 59 of their brief cite 32 Corpus Juris Secundum p. 397 and cases in support of the statement that "a medical opinion cannot be arbitrarily disregarded but on the other hand it cannot stand in face of actual facts to the contrary." This statement like other legal citations in respondents' brief is good law, but does not have the application to this proceeding that respondent seek to give it. The actual facts in this case, giving full credit to the sincerety of respondents' lay witnesses, are

that these 14 user witnesses had certain pains and discomforts. After taking Imdrin for a while each of them felt better. It was not an established fact that any of them except Mr. Vissinsky, ever had any form of arthritis, or that the taking of Imdrin was the cause of any of them feeling better. It is an established fact that, even if they all had arthritis, the affliction, particularly during the early stages, is subject to periods of remission, which may well have coincided with their taking Imdrin. Therefore, the actual facts in regard to these 14 user witnesses do not conflict with the expert testimony.

In connection with the testimony of these lay witnesses attention is called to the holding of the Commission in the matter of *Ward J. Miller, trading as Amber-Ita*, reported in 19 F. T. C. Decisions, p. 57. On page 72 in the findings the following statement is made:

> "Respondent introduced the testimony of 13 lay witnesses. Each testified that he or she had been diabetic and had been benefited by taking Amber-Ita. These patients were, in some instances, taking insulin or diet, or both, along with their Amber-Ita; in other instances no control of these patients was exercised; and in still others the alleged diabetic condition was founded on hearsay; that is to say these patients said that some doctor had told them that they had diabetes. If they were taking either insulin or diet or both with their Amber-Ita, its therapeutic value or lack of it could not be determined as either of the former, or both, is proper treatment in diabetes and no one could tell which was responsible for the improvement of these patients, if there was any improvement. The testimony of these lay witnesses is of no probative value."

It is true that the situation differs in the instant case from that in the Amber-Ita case in that these lay witnesses were not allowed to state the disease from which they claimed to have suffered. However, the fact re-
214 mains that none of them had any complaints at the time they were examined by respondents' doctors for the purpose of testifying in this action; that there were no controls over any of them while they were taking Imdrim; that Mrs. Rhoda Lipsie (R. p. 827), Mrs. Ida Klaus (R. p. 829), Mrs. Ingeborg Larson (R. p. 830; Arthur Fremault (R. p. 839), E. H. Carr (R. p. 948) were diagnosed by Dr. Weisberg as having had hypertrophic arthritis

and Mrs. Marchena (R. p. 1031), Mrs. Betty Raaberg (R. p. 1039) were diagnosed by Dr. Miller as having had osteoarthritis, the references to the record being where the doctors' diagnosis of each of these persons appears. The record shows in a number of instances that hypertrophic arthritis, degenerative arthritis and osteoarthritis are all different names for the same thing. If these lay witnesses had osteoarthritis they must have had a mild case since none of them had any complaints at the time they were examined by respondents' doctors. Most of them had not gone to a doctor for their complaints. Dr. Miller testified that in mild cases of osteoarthritis remissions occurred that may last for months (R. p. 1054). Hence in line with the thinking in the Amber-Ita case even if they each had had arthritis, no one could tell what was responsible for an improvement in symptoms reported by these lay witnesses. If they didn't have some form of arthritis, the fact that they took Imdrin and their pains went away is of no value as evidence in this case. All in all it is believed as was said in the Amber-Ita case "the testimony of these lay witnesses is of no probative value."

Respondents recognized that although none of the experts who testified for either side except Dr. Wolpaw and Dr. Lockie had ever had any experience with Imdrin, as such, they were entitled to give their opinion as qualified witnesses based on their general knowledge of medicine. Respondent therefore attacks the weight to be given the testimony of the expert witnesses who testified in support of the allegations of the complaint. Dr. Rosenberg testified that he had seen the formula and directions for use of the preparation (R. p. 309) as did Dr. Barton (R. p. 404) and Dr. Wolpaw (R. p. 496) who also testified that he had had actual experience in treating arthritic and rheumatic patients with Imdrin and observing the results. (R. p. 524.)

It will be observed that all of the expert witnesses supporting the complaint gave their opinion of the effectiveness of Imdrin itself, while respondents' experts, never gave any opinion as to the effectiveness of Imdrin but confined their opinions solely to the effectiveness of the salicylates in Imdrin. Therefore the only opinion evidence as to the effect or lack of effect of Imdrin itself is from the experts supporting the allegations of the complaint. The only time Imdrin was mentioned by any of respondents'

experts was by Dr. Weisberg in an affidavit which is Commission's Exhibit 39. There he says that the salicylates are the most active ingredients in Imdrin and that what he has said in the affidavit in regard to salicylates would be true of Imdrin in view of its salicylate content.

Each of the experts supporting the complaint were familiar with the effects of and had prescribed salicylates for persons suffering from arthritic conditions (Dr. Rosenberg, R. p. 341; Dr. Barton, R. p. 452; Dr. Wolpaw, R. 215 p. 532; Dr. Robinson, R. p. 1108), and salicylates were recognized by experts for both sides as being the active ingredient in Imdrin. It therefore follows that the experts supporting the complaint were not only testifying from their general knowledge of medicine, but also from their long experience with the only ingredients in the preparation claimed by respondent to be effective. Dr. Wolpaw and Dr. Lockie had actual experience with Imdrin (R. pp. 524, 1188, 1189).

If the testimony of the doctors who testified in support of the complaint and those who testified for respondents were diametrically opposed, it is believed that the superior qualifications of the doctors supporting the complaint would cause the evidence to preponderate in support of the findings of the hearing examiner. There is more to it than that, however. When carefully analyzed there is very little conflict in the expert evidence. A careful analysis and comparison of all the expert testimony in the record on the very finding of the hearing examiner being discussed here was made in the proposed findings filed with the hearing examiner by counsel supporting the complaint. This begins on page 17 and ends on page 33. Rather than copy those pages of the proposed findings verbatim, it is desired to incorporate them into this brief by reference.

If respondents' preparation will do nothing more than temporarily and partially relieve the minor pains of arthritic conditions, as was shown by a preponderance of the evidence, it follows that persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled by taking the drug preparation, Imdrin, to resume such habits or occupations. The record shows that Dr. Barton testified that the temporary partial relief afforded would last anywhere from a few minutes to an hour. (R. p. 451.) This is not disputed by any other expert. Thus the last statement in paragraph 9 of the initial decision is justified.

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Respondents also contend that they were legally justified in using the headlines:

"Amazing New Discovery For Rheumatism, Arthritis, * * *."

"Sensational New Research Discovery."

Their contention is that rheumatism and arthritis are generally regarded as incurable and therefore these headlines would fool no one and are to be regarded as legitimate "puffing." The contention that rheumatism and arthritis are generally regarded as incurable is not accepted and there is nothing in the record to sustain this violent assumption. The record shows many cases are cured and that many cases have remissions in the early stages. If we are going to indulge in assumptions, the assumptions can be made that more folks regard cancer as incurable than regard rheumatism and arthritis as incurable. Yet this Commission can take official notice of the fact that many sufferers from cancer were cruelly deceived by the advertising of Dr. Koch. (In the matter of *Koch Laboratories, Inc., et al.*, D. 4772).

216 Respondent quotes from the case of *Kidder Oil Co. v. Federal Trade Commission*, 117 F. (2d) 892, in support of the statement that the word "Amazing" is mere puffing, but he did not quote far enough. The court further said in that case:

> "We can conceive of situations where the use of such words might be deceptive and even fraudulent. As used by petitioner, however, we are of the opinion that they are nothing more than a form of 'puffing' not calculated to deceive." (Underscoring mine.)

It is submitted tnat here, where such words are used to describe a preparation the effect of which is entirely dependent upon the salicylate content, drugs which have been on the market for many years, is such a case as the court had in mind in the underscored portion of the quotation. The situation in the Kidder Oil Company case was not similar to the instant case. There, respondents had a motor oil that the court found was of more benefit to a motor than other oils because of a new ingredient, graphite.

There have actually been amazing new discoveries and sensational research discoveries in medicine both before and since respondents started advertising Imdrin in this manner. That respondents intended and hoped that their

readers would think Imdrin was in a class with sulfa and penicillin, is evidenced by the same advertisement referring to these drugs:

> "At last the story can be told! Medical science developed the wonder working drugs of Sulfa and Penicillin * * *." (Comm. Ex. 20).

As was said in *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission,* 143 F. (2d) 676 "The important criterion is the net impression which the advertisement is likely to make." It is submitted that as used and to the audience addressed these headlines carry the message that here is a new discovery that for those afflicted with rheumatism or arthritis is equal to Pasteur's discovery of germs as the source of infection. The actual truth, as revealed by the record, is that the preparation is not any kind of discovery. It is further submitted that such false representation cannot be justified by court decisions, which say that, "amazing," "new" or any other word as used in the case then before the court, is not deceptive.

C. The Order to Cease and Desist.

Respondents contend that the order is arbitrary and oppressive even if supported by a preponderance of the evidence. They contend that the provision of the order which prevents them from representing that Imdrin will do more than provide temporary and partial relief from the minor aches and pains attendant on rheumatism and arthritis, is oppressive for two reasons:

217 (1) They contend that the record shows that most cases are ambulatory and mild, and that respondent's advertising was directed mainly to this group;

(2) They contend that the word "temporary" in prohibition (c) of the order is unjustified as used in view of the court decision in the case of *D. D. D. Corporation* v. *Federal Trade Commission,* 125 F. (2d) 679.

Answering (1) above, even if most cases are ambulatory and mild, respondents' advertising is directed to those who have the worst cases. It is directed to those who suffer torture, agony and unendurable pains (Comm. Ex. 2); to those suffering the savage pains of rheumatism and arthritis (Comm. Ex. 4); to those who suffer the tortures

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of the damned, whose cases are deemed almost hopeless (Comm. Ex. 10); to those whom arthritis has forced to quit their jobs and walk with crutches (Comm. Ex. 12).

As a matter of fact the record does not show that most cases are mild, and the hearing examiner was justified in refusing to make this finding. The record does show there are no statistics on the subject. Dr. Rosenberg agreed that most cases were ambulatory (R. p. 340). He was not asked if they were mild. Dr. Barton drew a distinction between a case being ambulatory and being mild (R. p. 437) and estimated that at one time or another one-half of those suffering from rheumatism and arthritis are under the care of a physician (R. p. 455). Dr. Wolpaw estimated that 10% of those suffering from arthritis and rheumatism are severely crippled, (R. p. 518) that is useless for anything. (R. p. 526). Dr. Weisberg said that the vast number of cases were ambulatory. (R. p. 634). Dr. Black said the majority of cases were ambulatory (R. p. 647). Neither Doctors Wolpaw, Weisberg nor Black were asked if a majority of the cases were mild. Dr. Mayer was not asked if a majority of the cases were either mild or ambulatory. Dr. Arkim was asked if a majority were ambulatory and refused to make an estimate, except in the cases of rheumatic fever. His estimate of rheumatic fever patients was that the majority were bed-ridden. (R. p. 712). Dr. Robinson estimated that the majority of cases of rheumatism and arthritis were ambulant, but refused to say that the majority of cases were mild (R. p. 1142). Dr. Lockie disagreed that a majority of the cases were mild (R. p. 1196). He said that only ⅓ of the cases he saw were ambulant (R. p. 1206).

Respondents' second contention under this heading is that the order should not limit them to representing "temporary" relief because the case of *D. D. D. Corp.* v. *Federal Trade Commission, supra* held that the words "relief from itching" carried no implication that the preparation was a permanent cure for either the symptoms or the disease.

Reference to Shephard's Citations show that this particular holding of the Seventh Circuit Court of Appeals, has been commented upon three times since then by the same Court. *Aronberg* v. *Federal Trade Commission, supra; Sebrone Company* v. *Federal Trade Commission,* 135 F. (2d) 676, 679; *Carter Products, Inc.* v. *Federal*

Trade Commission, 182 F. (2d) 821, 824. In the
218 Aronberg case and the Sebrone case, the doctrine that "relief" carried the implication of "temporary" was rejected, or at least the facts in those cases were distinguished and orders including the word "temporary" were sustained. In the Carter Products case such order was reversed. The D. D. D. Corporation case has been cited many times in opinions in cases from other circuits but never on this particular point so far as the writer has been able to determine.

In the instant case respondents have represented—

> "If these unendurable aches and pains are due to rheumatism, start now using new safe Imdrin for quick relief * * * Imdrin contains a remarkable research discovery! * * * that not only stops pain, helps reduce swelling but acts to uncork the joints" (Comm. Ex. 2). (Underscoring mine).

In the D. D. D. Corp., case the Court agreed with the Commission that the phrase "for quick relief from the itching of eczema blotches, pimples, athletes foot, scales, rashes, etc. is a representation that the product is a remedy for the diseases or ailments thus named. In the same case the court held that "the word 'stop' carries with it an implication that the product is a remedy or cure and affords permanent relief" as used in the advertising statement "Its time to realize the D. D. D. prescription will stop the misery of itching skin in a jiffy!" (Underscoring mine).

In the Aronberg case the product was a preparation advertised to furnish relief from delayed menstruation and respondents cited the holding in the D. D. D. Corporation case in support of their contention that they had the right to use such advertising. The court said:

> "The term relief is not of definite connotation or entirely free from ambiguity; in a common sense it connotates permanent removal of organic or functional disturbance as distinguished from alleviation of discomfort." (Underscoring mine).

In this connection it is pertinent to point out that the record shows that "rheumatoid arthritis is a chronic progressive destructive disease which affects joints and also

affects many other organs of the body." (R. p. 328). Thus, it is an organic disease. Respondents have advertised:

> "All these various forms of arthritis and rheumatism are accompanied by pain; very often swelling and loss of function of the joints." (Comm. Ex. 20, Underscoring mine).

Thus, rheumatism and arthritis are functional diseases, and the court said that the word relief as applied to organic and functional disturbance connotates permanent removal.

219 Further, in the Aronberg case, in construing what has previously been held in the D. D. D. case, the court said this:

> "Furthermore in the cited case the Court carefully distinguished a statement that D. D. D. preparation would offer 'relief from itching' from one 'for quick relief from the itching of eczema, blotches, pimples, athletes foot, scales, rashes, etc.' holding that the latter implied remedial qualities."

If relief "from the itching of eczema, blotches, pimples, etc." implies remedial qualities, it is difficult to understand why "relief from arthritic pain stiffness and swelling" (Comm. Ex. 1) would not imply remedial qualities.

It seems impossible to distinguish the D. D. D. Corporation case from the Aronberg case on any other ground than that eczema, pimples, etc., are not regarded as serious matters, while delayed menstruation is. If this is the distinction intended, the record in this case shows that arthritis is a very, very serious matter. The record contains the testimony of 3 doctors in regard to the terrible consequences that may result if proper treatment is delayed. (Dr. Rosenberg R. p. 257; Dr. Barton, R. p. 400; Dr. Wolpaw R. pp. 490, 491).

In the Sebrone case, supra, the use of the word "relief" was not involved, but the same principle was involved. The Commission had ordered respondent to cease and desist representing that Sebrone had any therapeutic value in the treatment of dandruff in excess of assisting in the temporary removal of dandruff scales and beneficially affecting superficial infections of the scalp sometimes associated with the conditions of dandruff. The court held that the advertising "The treatment is * * * is quick * * * Stop

Dandruff in one week with Sebrone" implied that the preparation afforded permanent rather than temporary relief and sustained the order.

Compare this advertising with the advertising "* * * that not only stops pain, helps to reduce swelling but acts to uncork the joints!" (Comm. Ex. 2).

The Carter Products case, supra, involved an order of the Commission prohibiting respondent from representing that a deodorant "Arrid" would be more than temporarily effective in reducing the flow of perspiration, in keeping the armpits dry or odorless or in preventing the accumulation of odor creating body secretions or excretions in the armpits. Here the court went back to its original objection to word "temporary" in the D. D. D. Corporation case "because of its uncertain meaning," and said:

> "We pointed out that it might mean only a few minutes, yet experts testifying before the Commission admitted that Arrid's deodorant properties are effective at least 3 to 6 hours."

220 In the instant case the evidence on the point is that the temporary effect of Imdrin may be anywhere from a few minutes to an hour. (R. p. 451).

If, in order to meet this objection, respondents want the inhibition of (c) of the order changed to read "* * * in excess of affording temporary partial relief, by each dose Imdrin, of minor aches, pains or fever for approximately one hour," such change would not be objectionable.

III. Conclusion.

Under this heading, respondents remind the Commission that there is no evidence in the record to show that the purchasing public has been defrauded or injured. Such evidence could have been put in the record but no such showing is necessary where the record shows, as it does here, that the advertising has the capacity and tendency to mislead. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission, supra,* and cases therein cited. It would have been a waste of the taxpayers money to incur the expense of putting such evidence in the record.

Respondents also conclude that the inescapable result of approval of the initial decision would be to deprive the respondents of their rights to legitimately advertise their

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preparation. Respondent has no legitimate right to advertise falsely or deceptively. It is axiomatic that there can be no vested right in wrong doing. If any citation be needed to support this statement see *Randall* v. *Kreiger*, 23 Wall. 137. The Commission's order "is not bound to chart a course for respondents. They can have no doubt of the evils complained of and sought to be corrected." *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. (2nd) 29. We are not here dealing with the excision of a trade name as was involved in the case of *Jacob Seigel* v. *Federal Trade Commission*, 327 U. S. 608. Even in that case the court held:

> "The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the Courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist."

Here the remedy selected has direct relation to the unlawful practices found to exist.

It is therefore concluded that the order to cease and desist is not any harsher than necessary to correct the evils complained of and sought to be corrected, and should be sustained.

Respectfully submitted,
Joseph Callaway,
Counsel Supporting the Complaints.

Richard P. Whitely,
Director, Bureau of Antideceptive Practices.

221 **REQUEST FOR ORAL ARGUMENT.**

(Received Apr. 21, 1952. Secretary.)

(Letterhead of Frank E. & Arthur Gettleman, Chicago, Ill.)

April 16, 1952

Federal Trade Commission,
Washington 25, D. C.

Attn: Mr. D. C. Daniel, Secretary
Re: Rhodes Pharmacal Co., Inc., et al. Docket No. 5691

Gentlemen:

We are advised by Mr. Joseph Callaway, Trial Attorney for the Commission, that he has filed his brief in opposition the appeal of the above respondents.

Kindly consider this our formal request for oral argument of the above matter before the Commission, at an early date. Will you kindly advise us of the date and hour when this matter may be argued?

Yours very truly,

Frank E. & Arthur Gettleman,
By Edward Brodkey.

EB:ES

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222 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

NOTICE OF ORAL ARGUMENT.

You will please take notice that the time and place for oral argument upon appeal of respondents from the initial decision of the hearing examiner has been set for Thursday, May 8, 1952, at 2 p. m., in the Hearing Room, Federal Trade Commission Building, Washington, D. C.

Each side will be allotted not to exceed forty-five minutes.

You may appear and be heard if you so desire.

By direction of the Commission.

D. C. Daniel,
Secretary.

To: Rhodes Pharmacal Company, Inc.,
75 East Wacker Drive,
Chicago, Illinois.

J. Sanford Rose, President,
Rhodes Pharmacal Company, Inc.,
1540 Lake Shore Drive,
Chicago, Illinois.

Jerome H. Rose, Vice-President,
Rhodes Pharmacal Company, Inc.,
975 Fifth Avenue,
New York, New York.

Frank E. & Arthur Gettleman,
10 South LaSalle Street,
Chicago 3, Illinois.

Edward Brodkey,
10 South LaSalle Street,
Chicago 3, Illinois.

Dated: May 1, 1952

223 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn,
Albert A. Carretta.

• • (Caption—5691) • •

ORDER DENYING APPEAL FROM INITIAL DECISION OF THE HEARING EXAMINER, DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE.

This matter having come on to be heard by the Commission upon respondents' appeal from the initial decision of the hearing examiner, briefs in support of and in opposition to said appeal and oral argument of counsel; and

The Commission, upon consideration of the entire record herein, having decided, for the reasons stated in the written opinion of the Commission which is being issued simultaneously herewith, that all of the findings as to the facts contained in the initial decision are supported by reliable, substantial, and probative evidence of record; that the conclusion contained therein is correct; and that the order to cease and desist therein is proper upon this record and is required to provide proper relief from respondents' illegal practices; and

The Commission, therefore, being of the opinion that respondents' appeal from and exceptions to the hearing examiner's initial decision are of no merit and that said initial decision is appropriate in all respects to dispose of this proceeding:

224 It Is Ordered that the appeal of respondents from the initial decision of the hearing examiner be, and it hereby is, denied.

It Is Further Ordered that the initial decision of the hearing examiner shall on the 3rd day of October, 1952, become the decision of the Commission.

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It Is Further Ordered that respondents, Rhodes Pharmacal Company, Inc., J. Sanford Rose and Jerome H. Rose, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision, a copy of which is attached hereto.

By the Commission, Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

D. C. Daniel,
Secretary.

(Seal)

Issued: October 3, 1952.

Opinion of the Commission is attached.

225 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

INITIAL DECISION.

By Abner E. Lipscomb, Hearing Examiner.

(Filed January 11, 1952.)

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1949, issued and subsequently served its complaint in this proceeding upon respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding

regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

Findings as to the Facts.

Paragraph One: Respondent Rhodes Pharmacal Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose, individuals, are now and at all times mentioned herein have been, respectively, the president, and the vice president and treasurer, of said corporate respondent, Rhodes Pharmacal Company, Inc., with their offices located at the prin-
226 cipal place of business thereof, and are now, and at all times mentioned herein have been, in control of the management, policies, and operation of the said corporate respondent, including the acts, practices and methods herein found.

Paragraph Two: The respondents are now, and for several years last past have been, engaged in the manufacture, sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of a certain medicinal preparation designated "Imdrin," which is a "drug" within the meaning of the Federal Trade Commission Act, and for which the formula and directions for use are as follows:

Formula:

Each tablet contains:

Acetylsalicylic acid	1.9	grains
Manganese salicylate	1.5	grains
Calcium succinate (anhydrous)	2.3	grains
Caffeine	.16	grains
Thiamine chloride	1	mg.

Directions:

Two tablets before each meal with water.

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Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Paragraph Three: In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination, by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements of the drug preparation "Imdrin," for the purpose of inducing, and which were likely to induce, its purchase. Among such advertisements were radio broadcasts disseminated subsequent to September 1, 1948, by various broadcasting stations, and advertisements published subsequent to September 1, 1948, in various newspapers circulated throughout the United States. Typical of such advertisements are the following:

"Amazing New Discovery for Rheumatism, Arthritis
No Faster Arthritis Pain Relief Known
Safe . . . Hospital Tested
Stops Swelling . Uncorks Joints . Contains
Sensational New Research Discovery

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Picturization of
hand containing
tablet

New, Safe, Scientific Tablet
Not a Narcotic . . . Not Habit Forming . . .

At Last the Story Can Be Told! Science has turned its attention to relieving the agonizing pains of rheumatism and arthritis. The result of extensive research is the remarkable preparation Imdrin. Longtime sufferers from rheumatism, arthritis, neuritis and gout may find Imdrin gives glorious relief amazingly fast. Contains no dope or harmful drugs. Ask for Imdrin at drug stores.

Picturization of
scientist examining
test tubes

Developed after 3 Years of Extensive
Tests in Hospital Clinics

Imdrin has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that Imdrin works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, etc., should investigate this new development of modern medicine. Ask for Imdrin at drug stores.

Relieves Pain and Suffering After 20 Years of Torture!

228 *Picturization of man in wheel-chair

'I call Imdrin a miracle and you can understand why when I tell you that the pain which had tortured and crippled me was gone after I had taken Imdrin. Now, for the first time in years, I can move about without pain and enjoy life once again. Surely the thousands of unfortunates like me should be happy to learn about the blessed, fast-acting Imdrin.'

A. C., Chicago, Ill.

*Picturization of old woman invalid

'I had arthritis and rheumatism so bad I could hardly get around. In fact, I went to several doctors who told me that my case was hopeless and that they could do nothing for me. Well, I had about given up hope when I saw your ad in the paper and bought a bottle of Imdrin. I really think it's a wonder. I feel better with every dose I take. It seems like a dream to be free of so much pain.' Mrs. A. R. Webb, 311 N. Bryan St., Amarillo, Texas.

*Picturization of woman apparently suffering

'Even though my daughter is a registered nurse she could not find anything to help her agonizing arthritic pains. She tried everything but nothing did her any good. Then she bought Imdrin and she has had miraculous results. I am going to tell all my friends about the wonderful relief from Imdrin. It really is an amazing remedy.'

Mrs. C. C., Kunkletown, Pa.

•Posed by professional models.

Picturization of anatomical
chart with arrows showing
location of joints and muscles

Where Rheumatism Strikes . . .
And How to Detect It!

Rheumatic and arthritic pain and inflammation strikes any of the indicated areas. (See chart above.) But these diseases have many form and symptoms.

229 All forms of arthritis and rheumatism are accompanied by pain, very often swelling and loss of function of the joints. Hospital test patients receiving Imdrin were able to resume more happy active living once the pain subsided and their confidence grew. Imdrin reduced joint swelling and eased pain rapidly. Imdrin is your greatest hope. Imdrin may give you the same blessed results. Get Imdrin today!

How Imdrin Helps You!

If you have suffered the tortures of rheumatic or arthritic pains, swelling and stiffness . . . if you get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year . . . listen! Imdrin may answer your problem of comfortable living. In case after case Imdrin has proved its potency. Imdrin is one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement . . . and back it up with proven hospital and clinical records. Amazing new Imdrin brings new hope of a better life for you . . . and it is as close to you right now as your nearest drug store. Get Imdrin today. Use only as directed. If you don't agree that amazing new, scientific Imdrin is the greatest blessing you've ever discovered, return for your money back. Get Imdrin today—resume comfortable living tonight!

Today—Resume Confident, Pain-Free Living With Amazing New, Safe, and Scientific . . . Imdrin

Imdrin contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using Imdrin today. Don't miss the chance to enjoy living once again."

No Faster Arthritic Pain Relief or money back

Picturization of bottle of Imdrin

Mail this convenient mail order coupon

(Picture and one additional testimonial omitted.)

Coupon

"Imdrin is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis. . . .

230 "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysis) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect. . . .

"Imdrin is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica, and neuritis. To back up its claims, the distributors of Imdrin stand ready to return your money if you do not get the relief you desire. All druggists have Imdrin. Ask for it Today."

Paragraph Four: In the first line of the first above-quoted advertisement, respondents represent the drug preparation "Imdrin" to be an "Amazing New Discovery for Rheumatism, Arthritis," which will "Stop Swelling. Uncork Joints." From the quoted statements considered separately, and from the quoted statements considered in

the light of the entire advertisement, it may reasonably be inferred that the preparation "Imdrin" is a newly discovered drug or substance effective in the treatment of rheumatic and arthritic conditions. To represent that such preparation "stops swelling" and "uncorks joints" is to represent that it possesses therapeutic properties curative of such conditions. Furthermore, the picturization of the anatomical chart, accompanied by the statement, "Where Rheumatism Strikes and How to Detect It," logically warrants the inference that the drug preparation "Imdrin" is offered as a treatment for rheumatic and arthritic conditions.

Although the various advertisements carry such statements as "No faster arthritic pain relief known," "Relief of nagging aches, pains, swelling, and stiffness accompanying arthritic and related illnesses," "One of the fastest arthritic and rheumatic pain relievers known to medical science," and "It is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica and neuritis," such statements, and others similar thereto relating to the relief of the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug preparation "Imdrin" is offered only as an analgesic and antipyretic. The offering of said product as a "scientific remedy" implies that its use may effect cures. As used by respondents in their advertisements, the word "remedy" is not sufficiently qualified by any accompanying statement to modify or limit this significance of "cure."

The representation that ". . . Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again. No other medication for rheumatism and arthritis can make this amazing statement . . . and back it up with proven hospital and clinical records" clearly implies that such statement may truthfully be made with regard to the drug preparation "Imdrin," and, accordingly, that said preparation is an effective medication for rheumatic and arthritic conditions.

231 It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions:

2. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations;

5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

Paragraph Five: The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The term "neuritis" means inflammation of a nerve, which may be attended by pain, paralysis and degeneration of the nerve substance. This condition is produced by many causes, such as localized infection, creating toxic substances in the system; toxic acidity from the use of various drugs; deprivation of certain chemical substances or vitamins; metabolic disturbances connected with diabetes; and infection of a nerve by various germs, such as that which causes syphilis.

"Sciatics" is an ailment which is manifested by pain along the course of the sciatic nerve, and is one form of

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neuritis. It also results from various causes, such as pressure exerted on the nerve or its roots by a tumor or neoplasm or an over-growth of bone; irritation or inflammation of the sheath of the sciatic nerve; and many other causes.

232 The term "neuralgia" refers to a syndrome of pain, or violent spasms of pain, which occur along the course of various nerves.

"Gout" is a disease connected with a disturbance of the metabolic functions of the body, involving the absorption of uric acid, which may result in pathological changes in joints, bones, cartilages, and a number of internal organs, particularly the kidneys, which may be utterly destroyed thereby. In its early stages, the predominant symptoms of gout are recurring attacks of pain and swelling in the joints. Gout may cause deposits of crystalline material, with surrounding inflammation, in joints, resulting in the destruction of their function.

"Fibrositis" is a general term referring to an inflammation of the fibrous tissues of the body, arising from unknown causes, and manifested by symptoms of aching and stiffness about joints or in various muscle groups. It may result in sciatica.

The term "bursitis" refers to inflammation of a bursa, which is a sac, generally adjacent to a joint or a bony prominence of the body, containing fluid, the purpose of which is to act as a shock-absorber to provide for free movement of bones and joints. There are many types of bursitis, arising from known as well as unknown causes, such as gouty, tubercular, and gonorrheal bursitis.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints, and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

The term "osteoarthritis" refers to one of the chronic forms of joint diseases which has the pathological characteristic of a wearing away of cartilages and the production of excess bone at the margins of joints, which mani-

fests itself as a painful stiffness, creaking of joints, and sometimes loss of motion. Osteoarthritis may result from externally-caused injury, or from unknown causes.

The term "infectious arthritis" refers to a form of arthritis caused by invasion of the joint by a germ.

Paragraph Six: The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon
233 individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illness from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;

2. Detailed physical examination of every part of the patient's anatomy; and

3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

Paragraph Seven: An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; surgery; and medication. Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of

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drugs which can restore to normal the pathological changes which result from any arthritis or rheumatic ailment. It is possible, however, to restore to normal certain of such pathological changes which are due to vitamin deficiency, by administration in sufficient quantity of the appropriate vitamin.

Paragraph Eight: The thiamine chloride, which is a vitamin, contained in the drug preparation "Imdrin" is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones, for the reason that, when administered orally, as specified in the directions for taking Imdrin, succinates are converted to sugar by the liver, and, as succinates, never reach the bloodstream. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name "aspirin." Accordingly, the drug preparation "Imdrin" does not constitute a new discovery of scientific research.

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The analgesic effect of these salicylates, in the amount contained in the drug preparation "Imdrin," upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational.

Paragraph Nine: The drug preparation "Imdrin," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any of such conditions. The drug preparation "Imdrin," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and

antipyretic. The drug preparation "Imdrin," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief, the drug preparation "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis. Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking the drug preparation "Imdrin," to resume such habits or occupations.

The drug preparation "Imdrin," however taken, will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

Paragraph Ten: Respondents' representations concerning the drug preparation "Imdrin," as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

Conclusion.

The acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Order.

It Is Ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose
235 and Jerome H. Rose, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Imdrin," or any product of substantially similar composition or possessing substantially similar properties, whether sold

under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin," to resume such normal habits or regular occupations;

(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin," which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

Abner E. Lipscomb,
Hearing Examiner.

January 11, 1952.

236-237 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn,
Albert A. Carretta.

* * (Caption—5691) * *

OPINION OF THE COMMISSION.

By Mead, Commissioner:

This matter involves the truth or falsity of certain claims contained in respondents' advertisements of their medicinal preparation Imdrin. There is no contest as to the wording of the advertisements or the formula of the preparation. The contest is as of the meaning of the said advertisements, the value of said preparation and the appropriate form of order, if any, required herein.

Respondents contend that their representations mean only that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that it will provide treatment and cure of arthritis and rheumatism. Respondents no not contend that "Imdrin" will cure arthritis or rheumatic conditions in the sense of removing the basic causes of these conditions. They do contend, however, that the use of "Imdrin" as directed will relieve the pains, suffering, inflammation, stiffness and redness of persons affected with arthritis or rheumatism.

Certain of respondents' advertisements for Imdrin contained the following statements:

> "Arthritis and Rheumatism Sufferers. Don't needlessly suffer crippling pains—untold agony and torture experienced by sufferers of arthritis, rheu-
> 238 matism, lumbago, neuralgia and all of the other similar miserable ailments. Now blessed relief may be yours. Imdrin Tablets—the wonder prescription—acts immediately—decisively—brings marvelous

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freedom from pain. Imdrin is more than a so-called "pain-killer" or soothing balm. It's a combination of recognized medically tested ingredients that works internally * * * systematically! Yes. Imdrin works effectively—safely—through the *blood stream.* Gets down deep—right where the trouble lies. Fights poisons and toxins that cause all the pain, misery and suffering."

"You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! * * * that not only stops pain, helps reduce swelling, but acts to uncork the joints!"

"Cases deemed almost hopeless * * * persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement * * * and back it up with proven hospital and clinical records."

By their statements in these advertisements that their preparation would do more than relieve pain, that it would reduce swelling and act to uncork the joints, that it would fight the poisons and toxins that cause the pain, that it was a remarkable research discovery comparable to sulpha and penicillin and by other statements of like import, respondents have represented and implied that Imdrin is a newly discovered drug which constitutes an effective treatment for and will cure arthritis and rheumatic conditions in addition to representing that its use will afford relief from the aches and pains caused by such conditions.

In an attempt to prove that their advertisements do not mean to the purchasing public that Imdrin will provide a treatment and cure of arthritis and rheumatism, 239 respondents had a survey conducted. This survey consisted of showing three of respondents' advertisements to 300 members of the public and asking them whether those advertisements meant that Imdrin would provide relief from pain of arthritis or rheumatism or whether they meant that it would provide a treatment and cure of arthritis or rheumatism. Two of the advertise-

ments shown were short and relatively free of any statements implying respondents' preparation would have any effect other than pain relief. The third advertisement prominently featured pain relief in bold faced type. By the form of their questions respondents' survey implied that the advertisements represented one or the other, either Imdrin would provide pain relief or it would provide a cure. As all of respondents' advertisements claim Imdrin will provide pain relief in addition to their other representations, a survey implying that the advertisement either represented a cure or it represented pain relief was improperly designed to determine if they did not represent both. But even under these conditions the results of the survey show that nine percent of those questioned stated that the advertisements represented that Imdrin would provide a treatment and cure for arthritis and rheumatism. This number alone would constitute a sufficient showing of the deceptive nature of respondents' advertisements. Upon this record the Commission is of the opinion that the hearing examiner correctly held that respondents represented Imdrin would provide a treatment and cure for arthritic and rheumatic conditions in addition to their claim that its use would provide relief from the pains accompanying these conditions.

The greater weight of the expert medical testimony is that, when taken as directed, the only ingredient in Imdrin which has any significant beneficial effect is the salicylate. This ingredient is present in each tablet in the form of 1.9 grains of acetylsalicylic acid (i. e. aspirin) and 1.5 grains of manganese salicylate. Salicylate in the amounts contained in Imdrin, when taken as directed, has no therapeutic value in the treatment of arthritic or rheumatic conditions and has no beneficial effect upon the symptoms of such conditions other than to afford a temporary and partial relief from the less severe pains and fever caused by such conditions, according to the greater weight of the expert medical testimony.

240 In an attempt to disprove this medical testimony respondents presented witnesses who testified as to the improvement in their conditions upon taking Imdrin. From their testimony it is clear that improvement occurred. However, due to the uncertainty of the proof as to the cause of their original condition and the proof that the use of Imdrin was the cause of their improvement,

this testimony is not sufficient to offset the testimony of outstanding experts in the field of arthritis and rheumatism to the effect that temporary and partial relief of less severe pain and fever are the only effects possible from the use of this preparation, as directed, by persons suffering with arthritic or rheumatic conditions.

Respondents particularly except to the provision in the order contained in the hearing examiner's initial decision prohibiting them from advertising that Imdrin will have any therapeutic effect upon any of the symptoms of any arthritic or rheumatic condition in excess of affording temporary and partial relief of minor aches, pains or fever or that Imdrin is a remarkable, amazing, sensational new discovery of scientific research or that it will enable users to resume their normal habits or regular occupations.

In support of their contention that Imdrin was properly described as a new discovery, respondents point out that it does contain a unique combination of ingredients. However, the greater weight of the expert medical testimony shows that, in the dosage prescribed, the only beneficial ingredient is the salicylate which has been known and used for years by the medical profession for the relief of pain and the reduction of fever. The combining of other ingredients, which have no beneficial effect in the quantities used, with commonly known and used drugs does not make the resultant preparation a remarkable, amazing, sensational new discovery of scientific research. The use of such false and misleading representations was properly prohibited.

In support of their contention that they should not be restricted to representing that Imdrin's only therapeutic effect on the symptoms of arthritis and rheumatism is temporary and partial relief of minor aches, pains and fever, respondents contend (1) that this prohibition is not supported by the facts of record, (2) that the hearing
241 examiner in another case involving a similar preparation, Dolcin, omitted the word partial from his order thus permitting representations that said preparation would provide complete relief for minor aches, pains and fever, temporarily, and (3) that the court's have held that the use of the word "temporary" in the manner used in this order is improper as it is uncertain in its meaning and unnecessary for the protection of the consuming public.

The greater weight of the expert medical testimony is that the only ingredients in respondents' preparation which

have any significant beneficial effect, when taken as directed, are the 1.9 grains of acetylsalicylic acid and the 1.5 grains of manganese salicylate. Taken as directed, six tablets per day, Imdrin provides a daily dosage of 20.4 grains of salicylate containing compounds. Salicylates provide temporary relief from pain, the extent of the relief varying, within limits, according to the amount of the dosage. The expert medical testimony is unanimous that 20.4 grains is not a sufficient daily dosage to relieve the most severe pains resulting from arthritis and rheumatic conditions, and the greater weight of the expert medical testimony, including that of respondents' witness, Dr. Black, is that this constitutes too low a daily dosage for complete relief from pains accompanying an average case.

In the case referred to by respondents involving Dolcin, a similar preparation, while the quantity of salicylate in each tablet was comparable to that present in Imdrin, the dosage recommended for acute symptoms was double the dosage recommended for Imdrin. On the basis of that record the hearing examiner concluded that such a dosage would provide complete but temporary relief from the minor pains accompanying arthritis and rheumatism. The Commission is of the opinion that the daily dosage directed for the use of Imdrin was sufficient to afford only partial relief from minor pains accompanying arthritis and that respondents' advertisements offering complete relief from such pains are unfair and deceptive.

Respondents raise two objections to the use of the word "temporary" in the hearing examiner's order. One, that it is unnecessary, and two, that it is uncertain in its meaning. The Commission is of the opinion that advertising claims should always be so limited where only temporary relief is afforded unless by the very nature of the
242 claim, there is no real danger of deception. The danger of deception in this case lies particularly in the fact that respondents desire to represent that their preparation will afford relief from pains due to a particular cause, namely, pains of arthritis and rheumatism. By limiting the type of pain relief claimed, respondents imply that a lasting relief will be achieved by eliminating the cause of the pain. Advertisements offering relief from arthritic pain and suffering thus imply a lasting relief to a much greater extent than would be implied by claims for relief from underarm perspiration or odor or relief

from itching. It is in the same class as those representations which state that the use of a preparation will relieve delayed menstruation or remove dandruff, which unless qualified imply that the symptom will be permanently eliminated by removing its cause.

The decisions of the courts which have considered this question and permitted the use of the word temporary in certain orders while eliminating it in others, in the main, are distinguishable on this basis. In those cases involving a preparation which provides only temporary symptomatic relief where the representations implied that the relief or removal of the symptom would be effected by eliminating its cause, the courts have held that the requirement that such representations be limited to claiming temporary relief or removal of the symptom constituted a proper prohibition. Such a requirement, although indefinite as to the duration of the effectiveness of the preparation, can be satisfied by any representation which shows that lasting relief is not claimed. The Commission, therefore, is of the opinion that the inclusion of the word "temporary" as used in the order contained in the hearing examiner's initial decision is necessary and proper in all respects.

The Commission is of the further opinion that all of the findings as to the facts contained in the initial decision are supported by reliable, substantial, and probative evidence of record; that the conclusion contained therein is correct; and that the order to cease and desist is proper upon this record and is required to provide proper relief from respondents' illegal practices. We, therefore, are of the
243 opinion that respondents' appeal is of no merit and that it should be denied.

Commissioner Carretta did not participate in the decision of this matter for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, *Petitioners,*
vs.
Federal Trade Commission, *Respondent.* } 10748.

PETITION TO REVIEW CEASE AND DESIST ORDER OF THE FEDERAL TRADE COMMISSION AND STATEMENT OF POINTS.

To the Honorable Justices of the United States Court of Appeals for the Seventh Circuit:

Rhodes Pharmacal Company, Inc., an Ohio corporation, having its offices and principal place of business in the City of Chicago, Illinois, and J. Sanford Rose, of Chicago, Illinois, and Jerome H. Rose, of New York, New York, individually and as officers of said corporation, petitioners herein, petition this Court for a review of an order of the Federal Trade Commission, respondent herein (Docket No. 5691, dated October 3, 1952), and respectfully represent that:

1. On October 3, 1952, the Federal Trade Commission, respondent herein, entered an order directing petitioners to cease and desist from disseminating or causing to be disseminated certain advertisements alleged to be false and to constitute unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act (15 U. S. C. §§ 45 (a), 52).

2. Said order, as corrected, was served on all petitioners herein on October 9, 1952. Petitioners carry on business, and the acts and practices in question were used, in the State of Illinois and within the jurisdiction of this Court, all of which is alleged and stated in the complaint of respondent herein, the evidence adduced at hearings

held pursuant thereto and respondent's findings of fact. The jurisdiction of this Court to entertain this petition for review is based on Section 5(c) of the Federal Trade Commission Act (15 U. S. C. § 45 (c)).

3. Said order directs petitioners to cease and desist, inter alia, from:

"1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as 'commerce' is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication (emphasis supplied):

"(a) that the taking of said preparation (petitioners' product, known as 'Imdrin') will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

"(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

"(c) that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

"(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

"(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation 'Imdrin', to resume such normal habits or regular occupations;

"(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

"2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as 'commerce' is defined in the Fed-

eral Trade Commission Act, of the drug preparation 'Imdrin', which advertisement contains any of the representations prohibited by paragraph 1 hereof."

4. Petitioners aver that the foregoing cease and desist order, set out in paragraph 3 above, and each and every the terms and conditions thereof (including, without limitation, the underscored or italicized portions thereof), together with the findings of fact upon which said order is based and the conclusions there drawn with respect thereto, are each arbitrary and capricious, in excess of the statutory and constitutional authority of the Commission, unsupported by substantial evidence and hence unlawful and should be set aside, for the following reasons constituting the

Points Upon Which Petitioners Intend to Rely:

1. The findings of the Federal Trade Commission and the conclusions and cease and desist order based thereon are improper, invalid, beyond the power, jurisdiction and authority of the Federal Trade Commission and are arbitrary and capricious action in deprivation of the petitioners' rights and guaranties of due process of law under the Fifth Amendment to the Constitution of the United States.

2. The findings, conclusions and order are not supported by or based upon any substantial, credible evidence, but are against the manifest weight of the evidence. The entire record discloses that the weight of the substantial evidence in the record supports the case of petitioners.

3. Respondent erroneously and without basis of fact or reasonable inference found, inter alia, that (emphasis supplied):

(a) "Paragraph Four: * * * from the quoted statements considered in the light of the entire (petitioners') advertisement, it may reasonably be inferred that 'Imdrin' is * * * effective in the treatment of rheumatic and arthritic conditions * * *."

(b) Petitioners thereby "represent that it possesses therapeutic properties curative of such (arthritic and rheumatic) conditions * * *."

(c) "the picturization of the anatomical chart (in petitioners' advertisement selected as 'typical' by the Hearing Examiner), accompanied by the statement 'Where

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Rheumatism Strikes And How to Detect It', logically warrants the inference that the drug preparation 'Imdrin' is offered as a treatment for rheumatic and arthritic conditions."

(d) "such statements (as those quoted by the Hearing Examiner in sub-paragraph 2 of Paragraph Four of his findings), and other similar thereto relating to the relief of the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug product 'Imdrin' is offered only as an analgesic and antipyretic * * *"

(e) "The offering of said product as a 'scientific remedy' implies that its use may effect cures * * *."

(f) "The representation that '* * * Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again * * *' clearly implies that such statements may truthfully be made * * * and accordingly, that said preparation is an effective medication (as the Commission interprets that term) for rheumatic and arthritic conditions." It is respectfully represented that this is a non sequitur.

(g) In predicating inference upon inference, the Hearing Examiner erroneously concluded and further found "that through the above quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

"(1) That * * * 'Imdrin' * * * constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of * * * rheumatism and arthritis, * * * and that said preparation will cure * * * such diseases * * *.

(2) That the drug preparation 'Imdrin' * * * will afford complete, permanent relief from the aches, pains and discomforts thereof; * * *

"(4) That by taking * * * 'Imdrin' * * *, persons suffering from any or all of (these) afflictions will be enabled to resume their normal habits of life and their regular occupations; * * *"

(h) "Paragraph Six: The various pathological conditions generally referred to as 'arthritis' and 'rheumatism' * * * require different treatment, * * * An adequate, effective, or reliable treatment for any kind of 'arthritis' or 'rheumatism' must, therefore, be predicated on indi-

vidual diagnosis, * * * (which) may require any or all of the following determinations: * * *"

(i) "Paragraph Seven: * * * Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections * * *."

(j) "Paragraph Eight: The thiamine chloride, which is a vitamin, contained in * * * 'Imdrin' is insufficient in amount to have any beneficial effect * * *The calcium succinate content of such preparation has no significant therapeutic effect in the treatment of arthritic or rheumatic conditions, * * *. The caffeine content of 'Imdrin' has no significant therapeutic value in the treatment of any form or arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as anagesics and antipyretics, have been known for many years."

(k) "Acetylsalicylic acid has * * * been sold * * * under the name 'aspirin'. Accordingly, the drug preparation 'Imdrin' does not constitute a new discovery of scientific research." This is clearly a non sequitur.

(l) "The analgesic effect of these salicylates, in the amount contained in * * 'Imdrin', upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational."

(m) "Paragraph Nine: * * * 'Imdrin', however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, * * *."

(n) "'Imdrin', however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic."

(o) "* * * 'Imdrin', however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, * * *."

(p) "('Imdrin') will afford temporary and partial relief of only minor aches, pains and discomforts."

(q) "With the exception of such temporary and partial relief, * * * 'Imdrin' cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, * * *."

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(r) "Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking * * * 'Imdrin', to resume such habits or occupations."

(s) "Paragraph Ten: Respondents' representations concerning * * * 'Imdrin', as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act."

4. The Federal Trade Commission erroneously, and without warrant of law or fact, in addition to all of the unwarranted conclusions already drawn, concluded that "the acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act."

5. The findings as to the facts and conclusions of the respondent are not sufficient in law to support or sustain the cease and desist order of respondent.

6. The trial examiner, in his conduct of the hearings herein, erred in admitting, over objection of petitioners' attorneys, incompetent, irrelevant and immaterial evidence offered by the Federal Trade Commission and in excluding proper, competent, relevant and material evidence offered on the part of petitioners, the substance of which will be set forth more fully in petitioners' Brief to be filed herein.

7. The trial examiner, in conducting the hearings and making his findings of fact and conclusions, showed his bias in favor of the Federal Trade Commission and against petitioners. The Commission, in its conduct of the entire case, likewise demonstrated its bias.

8. The trial examiner erred in refusing to allow respondents an opportunity for sur-rebuttal or rejoinder designed to re-qualify certain expert witnesses of respondents whose qualifications the Federal Trade Commission first sought to impeach in its rebuttal evidence.

9. The cease and desist order goes further than is reasonably necessary or warranted to correct, and bears no reasonable relationship to the alleged evils complained

of and found by the Federal Trade Commission to exist in this matter.

10. Paragraph 1(c) of the cease and desist order issued by the Federal Trade Commission herein is discriminatory, contrary to and out of harmony with the precedents established by the Commission and the decisions of the Courts and is therefore unlawful, unauthorized and wrongful.

11. The cease and desist order of the Commission is so indefinite, vague, ambiguous, meaningless and uncertain as to render compliance therewith a matter of conjecture, speculation and guess work, and in this respect constitutes an invalid exercise of the Commission's authority.

12. The testimony and the entire record shows that the cease and desist order is not in the public interest.

Wherefore, petitioners pray that this Court review the order to cease and desist and that said order against petitioners be set aside and modified in whole or in part; and for such other and further relief as to the Court may seem meet and just.

Dated this 25th day of November, 1952.

Frank E. Gettleman,
Arthur Gettleman,
Edward Brodkey,
Counsel for Petitioners,
10 South La Salle Street,
Chicago, Illinois.

Endorsed: In the United States Court of Appeals. * * (Caption) * * Petition to Review Cease and Desist Order of the Federal Trade Commission and Statement of Points. U. S. C. A.-7 Filed Nov 25 1952. Kenneth J. Carrick, Clerk.

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At a regular term of the United States Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and fifty-three, and of our Independence the one hundred and seventy-eighth.

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

And afterwards, to-wit: On the third day of November, 1953, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

OCTOBER TERM AND SESSION, 1953

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

November 3, 1953

Before DUFFY, FINNEGAN and LINDLEY, *Circuit Judges*

DUFFY, *Circuit Judge:*

Petitioners ask us to review and set aside an order entered on October 3, 1952, by the Federal Trade Commission against petitioners, requiring them to cease and desist from making certain claims and representations in commerce in advertising their drug product "Imdrin."

Each tablet of Imdrin contains 1.9 grains acetylsalicylic acid, 1.5 grains manganese salicylate, 2.3 grains calcium succinate (anhy-

drous), 0.16 grain caffeine, 1 mg. thiamine chloride. Directions were: "Two tablets before each meal with water."

Petitioners have been engaged in an extensive advertising campaign by means of radio announcements and large advertisements in newspapers and magazines. The first line in the printed ads usually contains the statement printed in large bold type, "Amazing New Discovery for Rheumatism, Arthritis," followed by a subhead, "Hospital Tested. Stops Swelling, Uncorks Joints, Contains Sensational New Research Discovery." The ads usually contain pictures of men and women with faces or bodies apparently contorted with pain, and further down in the ad, under headings such as, "Resume Confident Pain-Free Living With Amazing New Imdrin," would appear pictures of men and women bowling or golfing, and apparently vibrant with good health. Some of the advertisements used by petitioner and which were described by the Commission in its findings are:

> "* * * Persons whose cases of suffering have been thought almost hopeless . . . yes, even people who had suffered and hoped for twenty years, were able to live free of pain . . . like happy human beings once again. No other medicine for rheumatism and arthritis thus far discovered by medical science has such an amazing record * * *."
>
> "Don't needlessly suffer crippling pains—untold agony and torture experienced by sufferers of arthritis, rheumatism, lumbago, neuralgia and all of the other similar miserable ailments. Now blessed relief may be yours. Imdrin tablets—the wonder prescription—acts immediately—decisively—brings marvelous freedom from pain. * * *"

And in its advertising by radio, various announcers said:

> "Imdrin . . . the brand-new, safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritis pain, stiffness, and swelling."
>
> "Stiffness and swelling disappear . . . often overnight."
>
> "You've read about the wonders of sulfa and penicillin. But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery . . . that not only stops pain, helps reduce swelling, but acts to uncork the joints. Thus clinical reports prove that people who have suffered from arthritis, sciatica, rheumatism, and neuritis up to 20 years have been eased of pain often in 48 hours, sometimes overnight * * *. Users of Imdrin report that they have resumed normal

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living. For them the aching joints and muscles are a thing of the past. Profit by the experience of many others. Get Imdrin . . . from your druggist today. * * *"

The Commission found that the terms "arthritis" and "rheumatism" are general terms used interchangeably to refer to a large number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatod arthritis, osteo-arthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms as pain, stiffness, and inflammatory changes in the joints and tissues of the body; that different conditions referred to as arthritis and rheumatism have different causes, and that not all muscular aches and pains are rheumatic; that different treatment is required for different types of rheumatism and arthritis; that the various kinds of arthritis and rheumatism do not respond to the same treatment; that effective and reliable treatment for any kind of arthritis or rheumatism must be predicated upon individual diagnosis. The Commission also found, "Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections."

The Commission also found, "The thiamine chloride, which is a vitamin, contained in * * * 'Imdrin' is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones * * *. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name 'aspirin.' The analgesic effect of these salicylates, in the amount contained in the drug preparation 'Imdrin,' upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary."

The Commission found that petitioners had represented (1) that Imdrin, when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism, and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions; (2) that Imdrin, when taken as directed, constitutes an

adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof; (3) that Imdrin is a remarkable, amazing, sensational new discovery of scientific research; (4) that by taking Imdrin as directed persons suffering from any of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations; (5) that the taking of Imdrin as directed will correct any disturbance of the vital enzyme system of the blood and bones, and will insure adequate functioning thereof.

The Commission then found that Imdrin will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition nor will it arrest the progress, or correct the underlying causes, or effect a cure of any of such conditions; that Imdrin, however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic; further that Imdrin has no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts, and that it will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

The Commission found that petitioner's representations in its advertisements of Imdrin were false and misleading in material respects and had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public, and that same constituted false advertisements within the meaning of the Federal Trade Commission Act.

The order of the Commission, which we are asked to review, requires the petitioners to cease and desist from disseminating advertisements as to Imdrin representing (a) that the taking of said preparation is an adequate, effective, or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition; (b) that Imdrin will arrest the progress or correct the underlying causes of, or will cure, the conditions listed in (a); (c) that Imdrin will afford any relief of severe aches, pains, and discomforts of conditions named in (a) or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains or fever; (d) that Imdrin is remarkable, amazing or sensational or is a sensational new discovery of scientific research, or a new discovery; (e) that persons afflicted with conditions listed in (a) so severely that such afflictions interfere with their normal habits of life will be enabled, by taking Imdrin, to resume such normal habits or regular occupations; and (f) that the

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taking of Imdrin will have any therapeutic effect upon the functioning of the enzyme system of the blood or bones.

Petitioners urge that there is no substantial evidence in the record for the Commission's finding that they represented that Imdrin constituted an adequate, effective and reliable treatment for all forms of arthritis and rheumatism. They point out that they never used the word "cure" in their advertisements and assert that their product was offered to the public only as a relief from pain. It is apparent they made an effort to avoid the use of the word "cure" although one radio advertisement stated, "In a moment I'll be back to tell you folks who have been suffering from arthritis, sciatica, rheumatism and neuritis, news about Imdrin . . . the Brand-new, safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritis pain, stiffness, and swelling." Furthermore, in other ads petitioners often included descriptions of situations which, to many potential users, might well imply a cure, such as: "Imdrin * * * brings marvelous freedom from pain," and "For them (users of Imdrin) the aching joints and muscles are a thing of the past," which would lead such persons to believe or hope that Imdrin would effect a cure from their previously existing condition. Again petitioners asserted in their ads, "Amazing New Discovery for Rheumatism, Arthritis." They did not confine themselves to asserting that Imdrin was for relief of pains or aches from rheumatism or arthritis. In several instances the courts have held that a representation that a preparation is to be used "for" a disease is equivalent to labeling it a cure or remedy for such disease. *Aronberg* v. *Federal Trade Commission*, 7 Cir., 132 F. 2d 165, 168; *Hall* v. *United States*, 5 Cir., 267 F. 795, 798.

Petitioners place great reliance upon a survey conducted for them by one Breiman, who interviewed 300 people in New York City, to each of whom he showed three of petitioners' advertisements (Exhibits Nos. 6, 8 and 13), and asked two questions: "Do these ads mean that Imdrin will provide relief of pain of arthritis or rheumatism?" or "Do these ads mean that Imdrin will provide treatment and cure for arthritis and rheumatism?" He reported that approximately 91% of those interviewed stated that the advertisements meant Imdrin would provide relief from pain, while approximately 9% stated that they meant that Imdrin would provide treatment and cure of arthritis and rheumatism. Petitioners insist that this survey provided the only reliable evidence of consumer reaction, against which, they claim, opinions and inferences cannot prevail.

Theoretically a sound method of ascertaining the meaning of petitioners' advertisements to the consuming public would be to interview potential customers and ascertain what those ads meant to them. A survey of the attitude of dentists toward a drug preparation was considered by the court in *Bristol-Myers Co.* v. *Federal Trade*

Commission, 4 Cir., 185 F. 2d 58, 60. The government offered a survey of consumer reaction in *United States* v. *88 Cases, More or Less, Containing Bireley's, etc.*, 3 Cir., 187 F. 2d 967, 974. The testimony of witnesses drawn from the general public, as to the impressions made upon their minds upon reading the advertisements, was admissible. This procedure of investigation has received the sanction of the courts. *Gulf Oil Corp.* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106, 108; *Stanley Laboratories, Inc.* v. *Federal Trade Commission*, 9 Cir., 138 F. 2d 388, 391; *Ford Motor Co.* v. *Federal Trade Commission*, 6 Cir., 120 F. 2d 175, 182.

Obviously the value of a survey depends upon the manner in which it was conducted—whether the techniques used were slanted or fair. For instance, the Commission here contends that the form of, and the manner of asking the questions excluded the possibility of potential consumers answering that the advertisements made representations both as to treatment and cure, as well as to provide relief from pain.

In *Quaker Oats Co.* v. *General Mills*, 7 Cir., 134 F. 2d 429, 433, we stated that all the evidence obtained in that case by the surveys could be disregarded and the plaintiff would still prevail. However, we did not say then, and we do not say now, that evidence obtained as a result of a survey is of no probative value.[1] We recognize that the rule is well established that evidence which would be excluded in an ordinary lawsuit may, under many circumstances, be received on hearings before an administrative agency. The Supreme Court has stated, "* * * technical rules for exclusion of evidence applicable in jury trials do not apply to proceedings before federal administrative agencies in the absence of a statutory requirement that such rules are to be observed." *Opp Cotton Mills, Inc., et al.* v. *Administrator of the Wage and Hour Division, etc.*, 312 U. S. 126, 155. See also: *Stanley Laboratories* v. *Federal Trade Commission*, 9 Cir., 138 F. 2d 388, 392.

The important question to be resolved is the impression given by an advertisement as a whole. Advertisements which are capable of two meanings, one of which is false, are misleading. *United States* v. *95 Barrels of Vinegar*, 265 U. S. 438, 442. Advertisements which create a false impression, although literally true, may be prohibited. *Koch* v. *Federal Trade Commission*, 206 F. 2d 311; *Consolidated Book Publishers* v. *Federal Trade Commission*, 7 Cir., 53 F. 2d 942, 944. The Federal Trade Commission Act provides, "* * * and in determining whether any advertisement is misleading, there shall be taken into account * * * representations made or suggested * * *." 15 U. S. C. A., Sec. 55(a).

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[1] See interesting discussion in *66 Harv. Law Rev. 498*, "Public Opinion Surveys as Evidence: The Pollsters Go to Court."

The meaning of advertisements to the public and their capacity to deceive are questions of fact for the Commission to determine, and its conclusions may not be disturbed unless arbitrary or clearly wrong. *Gulf Oil Corp.* v. *Federal Trade Commission, supra.* Applicable here is our statement in *Zenith Radio Corp.* v. *Federal Trade Commission*, 7 Cir., 143 F. 2d 29, 31, "The Commission had a right to look at the advertisements in question, consider the relevant evidence in the record that would aid it in interpreting the advertisements, and then to decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint."

We think the findings of the Commission are supported by substantial evidence. We agree with the conclusions of the Commission that petitioners were engaged in unfair and deceptive practice in commerce. We think that the cease and desist order should be enforced in the manner proposed, with the exception of sub-section (e) which should be modified. Orders of the Commission, which we are called upon to enforce, must not be indefinite or ambiguous. *Caldwell* v. *Federal Trade Commission*, 7 Cir., 111 F. 2d 889, 891. Under Paragraph 1(e) the petitioners are restrained from representing "that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever." Thus the representations that Imdrin will afford any relief of severe aches, pains and discomforts is prohibited, but permission is given to represent that it would afford temporary and partial relief of minor aches, pains or fever.

In *Carter Products, Inc., et al.* v. *Federal Trade Commission*, 7 Cir., 186 F. 2d 821, 826, we stated, "* * * this court in *D.D.D. Corp.* v. *Federal Trade Commission*, * * * disapproved of the use of the word 'temporary' because of its very uncertain meaning. We pointed out that it might mean only a few minutes, yet experts testifying before the Commission in this case admitted that Arrid's deodorant properties are effective at least three to six hours. We think in the case at bar, as we did in the *D.D.D.* case, that protection of the public does not require petitioners to use the word 'temporary' or 'temporarily,' and that to require its use would be unfair to the petitioners in representing the truth as to Arrid." In *D.D.D. Corp.* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 682, we said, "We are also of the view that the word 'temporary' as used in * * * the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure either the

itch or its cause, but it does afford relief. * * * The word 'temporary' carries an uncertain meaning."

It was overwhelmingly established in the case at bar that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions. The duration of time that such relief was afforded differed with the individuals who used Imdrin. It was just as firmly established that Imdrin would not furnish permanent relief or effect a cure of rheumatic or arthritic conditions. Petitioners should be permitted to represent the truth, but be required to refrain from making the highly exaggerated claims which they have heretofore made. The five sections of the order which we approve will very largely correct the misleading and deceptive representations which petitioners have made in their advertisements.

Paragraph 1(c) of the cease and desist order will be modified to read:

> "(c) that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition."

As hereinbefore indicated, the cease and desist order is affirmed, and the enforcement thereof, as modified, is ordered.

A true copy:

Teste:

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit. (SEAL.)

And on the same day, to-wit: On the third day of November, 1953, the following further proceedings were had and entered of record, to-wit:

Tuesday, November 3, 1953

Before: HON. F. RYAN DUFFY, *Circuit Judge;* HON. PHILIP J. FINNEGAN, *Circuit Judge;* HON. WALTER C. LINDLEY, *Circuit Judge.*

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof: It is ordered and adjudged by this Court that Paragraph 1(c) of the order of the Federal Trade Commission entered in this cause on October 3, 1952 be modified to read:

> "(c) that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition."

It is further ordered and adjudged by this Court that, as indicated in the Opinion of this Court filed this day, all other parts of the order of the Federal Trade Commission entered in this cause on October 3, 1952, be affirmed, and the enforcement thereof, as modified, is ordered.

And afterwards, to-wit: On the seventeenth day of November, 1953, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Rehearing, is in the words and figures following, to-wit:

No. 10748

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Rehearing

ROBERT B. DAWKINS,
Assistant General Counsel,
DONOVAN DIVET,
Special Attorney,
Attorneys for Federal Trade Commission.

U. S. C. A.—7, filed Nov. 17, 1953. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Rehearing

I

Comes now the respondent, Federal Trade Commission, by its attorneys, and believing that this Honorable Court, in its decision of November 3, 1953, in the above-entitled matter, modifying Paragraph 1 (c) of the Commission's order to cease and desist, unintentionally removed from the order important provisions wholly unrelated to any question of "temporary relief", therefore respectfully petitions this Court for a rehearing upon the grounds hereinafter set forth.

II

Paragraph 1 (c) of said order to cease and desist as entered by the Commission read:

> 1. (c) That said preparation will afford any relief of severe aches, pains and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

Paragraph 1 (c) as modified by the Court reads:

> 1. (c) That said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia; fibrositis, bursitis, or any other arthritic or rheumatic condition or effect a cure of the symptoms or manifestations of any such condition.

From a comparison of Paragraph 1 (c) as entered by the Commission with the same paragraph as modified by the Court, it is apparent that the Commission's order forbade petitioners to rep-

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resent (1) that the product Imdrin would afford any relief of severe aches, pains and discomforts (2) or have any therapeutic effect upon any of the symptoms of arthritis or rheumatism other than minor aches, pains or fever, and that the order as modified by the Court does not forbid them to make these representations.

Respondent respectfully shows to the Court that there are many symptoms of arthritis and rheumatism other than minor aches, pains and discomforts, such as swelling, stiffness and limitation of motion (Tr. 656-661; 707-710) as the Commission found (Initial Decision, Paragraph Five; Tr. 954-955).

III

In its opinion the Court said: "The Commission then found * * *; further that Imdrin has no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts, * * *" (Opinion, p. 4). This finding supports both of the prohibitions of Paragraph 1 (c) of the order to cease and desist as entered by the Commission and as set forth in Paragraph 2 above.

After considering the finding last quoted and other findings, the Court said: "We think the findings of the Commission are supported by substantial evidence" (Opinion, p. 8).

IV

Respondent respectfully calls the attention of the Court to the fact that Paragraph 1 (c) of the order, as modified by the Court, permits petitioners to advertise that Imdrin will afford any degree of relief petitioners choose to claim, provided it is less than permanent relief, of the severe aches, pains and discomforts of arthritis or rheumatism, which is contrary to the finding of the Commission that the product as taken "will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition * * *" (Initial Decision, Paragraph 9; Tr. 958).

Respondent further respectfully calls the attention of the Court to the fact that Paragraph 1 (c) of the order to cease and desist, as modified by the Court, permits petitioners to advertise that the product Imdrin will afford any degree of relief petitioners choose to claim, provided it is less than permanent relief, of all symptoms of arthritis and rheumatism, and forbids them only to represent that the product will effect a cure of the symptoms and manifestations. The Commission has found that the product, however taken, will afford temporary and partial relief of only minor aches, pains and discomforts and that "with the exception of such temporary and partial relief, the drug product 'Imdrin' cannot be depended upon to

have any effect whatever upon the symptoms of any arthritic or rheumatic condition * * *" (Initial Decision, Paragraph 9; Tr. 958).

V

Respondent, Federal Trade Commission, sincerely believing that this Court has unintentionally overlooked the above-described effects of the modification of Paragraph 1 (c) of the order to cease and desist, and believing that the public interest will be seriously and adversely affected if Paragraph 1 (c) is allowed to stand in its present modified form, most earnestly and respectfully petitions the Court to amend its modification of Paragraph 1 (c) of the order to cease and desist so that it will not permit the above-described representations in contravention of the Commission's findings as approved by the Court.

VI

For the convenience of the Court, the following form of amendment of said Paragraph 1 (c) is respectfully suggested:

> 1. (c) That said preparation will afford relief from the swelling, stiffness or limitation of motion due to arthritis or rheumatism, or from the severe aches or pains of arthritic or rheumatic conditions; or that said preparation will afford permanent relief from any of the aches or pains of arthritic or rheumatic conditions.

Respectfully submitted.

ROBERT B. DAWKINS,
Assistant General Counsel,
DONOVAN DIVET,
Special Attorney,
Attorneys for Federal Trade Commission.

And afterwards, to-wit: On the twenty-fifth day of November, 1953, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is in the words and figures following, to-wit:

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IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

ANSWER TO PETITION FOR REHEARING

FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
EDWARD BRODKEY,
10 S. La Salle Street,
Chicago 3, Illinois,
Attorneys for Petitioners.

U.S.C.A.-7
Filed Nov. 25, 1953.
KENNETH J. CARRICK,
Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

ANSWER TO PETITION FOR REHEARING

In answer to Respondent's* Petition for Rehearing, Petitioners* sincerely believe that this Court fully appreciated the effect of its modification of the Commission's cease and desist order herein and

* The terms "Respondent" and "Petitioner," herein are used to describe the parties to the original petition for Review and not the present "Petitioner" for Rehearing.

clearly understood and intended the several changes in its phraseology.

I

The Court Had Power to Reject the Form of Order Proposed by the Commission and Properly Did So

The Federal Trade Commission, in its Petition for Rehearing, argues that because this Court said that

> "the findings of the Commission are supported by substantial evidence," (Opinion, p. 8),

it must, on that account, adopt the Commission's order to cease and desist. The Commission's order itself is not sacrosanct. The statute provides only that

> "the *findings* of the Commission *as to the facts*, if supported by evidence, shall be conclusive." 15 U.S.C.A. § 45(c) [Emphasis supplied.]

Nothing is said about the conclusiveness of the *order*. On the contrary, "the statute gives this court power not only to affirm or reverse, but also to modify the order of the Commission. 15 U.S.C.A. § 45(c) and (d). [Also, Administrative Procedure Act, 5 U.S.C.A. § 1001 *et seq.*] *This power to modify extends to the remedy. Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212" (1932); *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821, 826; *Folds* v. *Federal Trade Commission*, 7 Cir., 1951, 187 F. 2d 658, 661.

Accordingly, this Court had full power to modify the Commission's order to cease and desist, and to do so even if it sustained the Commission's findings of fact. In the *Royal Milling Co.* case, *supra*, at p. 217, the Supreme Court said:

> "Although we sustain the Commission in its findings and conclusions * * * we think * * * the Commission went too far in ordering * * * suppression of the trade names. * * *"

It is therefore immaterial, and perfectly proper, that this Court declined to implement the Commission's findings in the way it desired. It was proper to refuse to effectuate the findings as to the effect of Imdrin on "severe" pains and on "temporary" and "partial" relief therefrom by adopting the remedies proposed by the Commission. The Court said:

> "The five sections of the order which we approve will very largely correct the misleading and deceptive representations which petitioners have made in their advertisements." (Opinion, p. 9.)

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These sections alone will prohibit petitioners' claiming their product to be a cure for rheumatism and arthritis, or even an effective treatment for those diseases. As modified, the order will not permit petitioners to say their product cures even the symptoms of these diseases or affords any permanent relief from the pains thereof. They may not refer to their product in "exaggerated" terms, nor may they claim it will enable a user to return to normal work or living. In fact, the only representations not specifically prohibited are that the product relieves the "severe" pains and other symptoms of rheumatism and arthritis or relieves pain completely.

II

The Court Refused to Adopt the Entire Proposed Cease and Desist Order for Good Reasons, Expressed and Implied.

Both in its brief and on oral argument, the Commission urged this Court to affirm its original order to cease and desist, which proscribed petitioners' advertising that its product would afford relief from "severe" pains or more than "temporary" and "partial" relief from "minor" ones. Its contentions in that behalf were then made known to this Court, but the terms of the Commission's order were rejected as unnecessary to the protection of the public and unduly oppressive to petitioners.

This Court refused to require petitioners to use the word "temporary [relief] in their advertising, for the reasons it had previously stated in the *Carter Products* case, *supra*, and in the case of *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679, 682, that:

> "We think * * * that *protection of the public does not require* petitioners to use the word 'temporary' or 'temporarily', and that to require its use *would be unfair* to petitioners in representing the truth * * * [and that] the word 'temporary' carries an uncertain meaning." [Emphasis supplied.]

While the Court does not state any specific reason for modifying the Commission's order to eliminate reference to "severe" and "minor" [pains] and to "partial" [relief], the general rule is that, in the absence of specific statutory or constitutional mandate, a reviewing court need not assign reasons for its decisions and for each part thereof. 14 Am. Jur. § 132, pp. 347 and 348; cf. *Respublica* v. *Doan*, 1 Dall. (U.S.) 86, *Joyce, Inc.* v. *Fern Shoe Co.*, 32 F. Supp. 401, cause remanded, 116 F. 2d 498. This is especially true where the reason for the decision is obvious, so that, in many cases *per curiam* decisions are appropriate. In our case, it seems apparent that this Court eliminated the requirements to use the words "severe", "minor" and "partial" for the same reason it deleted

the word "temporary", namely, that all these terms were of the same vague and uncertain connotation. To some persons "partial" relief might mean the difference between agony and bearable pain, while to others it might mean the virtual elimination thereof. And what to one individual is a "severe" pain, to another is a "minor" one. To paraphrase the Court's observation with respect to the designation of relief as "temporary", the degree of relief afforded and the severity of the pain relieved "differed with the individuals who used Imdrin." (Opinion, p. 9.)

III

The Commission's Position Herein Is Inconsistent

The Commission is likewise unwarranted in assuming that because this Court stated in its opinion (p. 8) that "We think the findings of the Commission are supported by substantial evidence", it meant that *every* individual finding made was so established and supported. If that were what this Court meant to be understood as holding, it would thereby have agreed with the finding of the Commission (Opinion, p. 4) that Imdrin would not ameliorate rheumatic pains other than temporarily, and to the deletion of that prohibition from the order the Commission makes no objection. (Petition for Rehearing, p. 4.) And if the clause above quoted be interpreted to mean that this Court thought Imdrin would afford only temporary relief, the Commission does not question the propriety of the remedy chosen by the Court for that purpose.

IV

The Record Herein Will Not Sustain the Form of Order Desired By the Commission.

Respondent's suggestion that, because the Commission found there are symptoms of rheumatism and arthritis other than pain, including stiffness, swelling and the like, this Court should therefore approve an order to cease and desist from representing that the use of Imdrin would afford relief from these additional symptoms, is neither logical nor supported by the record herein. The Commission made no finding that Imdrin would have *no effect* upon these additional symptoms or that it would not relieve them. There is no finding that Imdrin will not relieve stiffness and the like (R. 958), but the record shows that its use will aid in accomplishing that end (R. 357, 396, 556, 704). And paragraph 1(c) of the modified order prohibits petitioners from advertising that Imdrin would "effect a cure of the symptoms or manifestations of any such condition." (Opinion, p. 9.) It seems to us that such a prohibi-

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tion goes far enough to effectuate the findings in that behalf. "The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and the public." *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 217 (1932).

It is accordingly urged that the Petition for Rehearing be denied.

Respectfully submitted,

FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
EDWARD BRODKEY,
Attorneys for Respondents.

And afterwards, to-wit: On the fifth day of January, 1954, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 5, 1954.

Before:

Hon. F. Ryan Duffy, Circuit Judge
Hon. Philip J. Finnegan, Circuit Judge
Hon. Walter C. Lindley, Circuit Judge

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby, Denied.

And afterwards, to-wit: On the second day of February, 195 there was filed in the office of the Clerk of this Court, Petitioner Motion for Entry of Final Decree, which said Motion is in th words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR TH SEVENTH CIRCUIT

U.S.C.A.-7. Filed Feb. 2, 1954. Kenneth J. Carrick, Clerk.

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFOR ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SA CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION

NOTICE

To: Robert B. Dawkins

Assistant General Counsel, Federal Trade Commission
Donovan Divet
Special Attorney, Federal Trade Commission
Federal Trade Commission,
Washington, D. C.,
Attorneys for Respondent.

Please Take Notice that we have this day filed with the Clerk o the United States Court of Appeals for the Seventh Circuit a Fina Decree in the above entitled cause, copy of which is hereto at tached and herewith served upon you, together with Petitioners motion that the same be entered by the Court instanter. Pleas be governed accordingly.

(S.) FRANK E. GETTLEMAN,
(S.) ARTHUR GETTLEMAN,
(S.) EDWARD BRODKEY,
Attorneys for Petitioners.

Dated: February 2, 1954.

STATE OF ILLINOIS,
County of Cook, ss.

Edward Brodkey, being first duly sworn on his oath, deposes and says that he served a copy of the above and foregoing notice, to gether with a copy of the Final Decree and motion for the entry of same thereto attached upon the attorneys for respondent by enclosing a copy of said notice, motion and decree in an envelope addressed to said Robert B. Dawkins, Assistant General Counsel,

and Donovan Divet, Special Attorney, Federal Trade Commission, at said Federal Trade Commission, Washington, D. C., and depositing same, with sufficient United States postage thereto attached, in the post office located in the United States Courts Building, Chicago, Illinois, on February 2, 1954, at 3:00 p.m.

And affiant further says that a copy of said notice, motion and decree for each of said attorneys for respondent was enclosed in said envelope and so mailed to said persons.

——— ———,

Subscribed and sworn to before me this 2nd day of February, 1954.

——— ———,
Notary Public.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitioners' Motion for Entry of Final Decree

Now come RHODES PHARMACAL COMPANY, INC., a corporation, and J. SANFORD ROSE and JEROME H. ROSE, individually and as officers of said Corporation, petitioners herein, by Frank E. Gettleman, Arthur Gettleman and Edward Brodkey, their attorneys, and move this Honorable Court to enter herein instanter a Final Decree, copy of which is hereto attached and made a part hereof, and show:

1. This Court entered its order of modification and affirmance of the cease and desist order before that time issued by the Federal Trade Commission, and opinion in support thereof, on November 3, 1953;

2. This Court, on January 5, 1954, entered its order denying the Petition for Rehearing before that time filed herein by the Federal Trade Commission;

3. The Federal Trade Commission, respondent herein, has wholly failed within ten days from the filing of an opinion directing the entry of a decree enforcing the order of an administrative agency, board or commission to serve upon these petitioners and file with

the Clerk of this Court a proposed decree in conformity with such opinion, as required by Rule 30 of the Rules of the United States Court of Appeals for the Seventh Circuit.

(S.) FRANK E. GETTLEMAN,
(S.) ARTHUR GETTLEMAN,
(S.) EDWARD BRODKEY,
Attorneys for Petitioners.

And afterwards, to-wit: On the tenth day of February, 1954, there was filed in the office of the Clerk of this Court, an Answer to Petitioners' Motion for Entry of Final Decree, which said Answer is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

U.S.C.A. 7. Filed Feb. 10, 1954.

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT.

KENNETH J. CARRICK,
Clerk.

NOTICE

To: FRANK E. GETTLEMAN,
ARTHUR G. GETTLEMAN,
EDWARD BRODKEY,
Attorneys for Petitioners.

Please take notice that we have this day mailed to the Clerk of the United States Court of Appeals for the Seventh Circuit an Answer to Petitioners' Motion for Entry of Final Decree in the above-entitled matter, copy of which is hereto attached and herewith served upon you.

(S.) ROBERT B. DAWKINS,
Assistant General Counsel.
(S.) DONOVAN DIVET,
Special Attorney.
Attorneys for Respondent.

Dated: February 8, 1954.

CITY OF WASHINGTON,
District of Columbia, ss.

Donovan Divet, being first duly sworn, deposes and says that he served a copy of the above and foregoing notice, together with a copy of the respondent's answer to petitioners' motion for entry of final decree, upon the attorneys for petitioners, by enclosing a copy of said notice and answer in an envelope addressed to Frank E. Gettleman, Arthur G. Gettleman and Edward Brodkey, at Suite 1400, Otis Building, 10 South LaSalle St., Chicago, Ill., and depositing same in the United States mails, on Febuary 8, 1954; that said envelope was a duly stamped and Government franked envelope.

(S.) DONOVAN DIVET.

Subscribed and sworn to before me, this 8th day of February, 1954.

(S.) DOROTHA D. NOONAN,
Notary Public.

(Seal.) My commission expires November 14, 1956.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT.

ANSWER TO PETITIONERS' MOTION FOR ENTRY OF FINAL DECREE

Comes Now the Federal Trade Commission, the above-named respondent, and answering the petitioners' motion for entry of final decree, respectfully shows to the Court:

1. That respondent has not submitted a proposed form of final decree because of the fact that the time for applying for a writ of certiorari to review the decision of this Court in this matter has not expired and the question of applying for such writ is now under consideration.

2. That if a decree is to be entered at this time respondent has no objection to the form of the said proposed decree except (1) to

the second unnumbered paragraph on page 1 of said proposed final decree and (2) to the use of the word "and" in paragraph 1(a) of said proposed final decree.

3. That the Court's order for modification and enforcement of the Commission's order to cease and desist made no provision for the modification of either the paragraph of the order to cease and desist corresponding to the second unnumbered paragraph on page 1 of said proposed final decree or for the modification of said paragraph 1(a) of the Commission's order to cease and desist.

4. That the said unnumbered second paragraph on page 1 of said proposed final decree reads as follows:

> Now, therefore, it is hereby ordered, adjudged and decreed that the petitioners, Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of a preparation for the treatment of the symptoms and alleviation of the aches, pains and fever of rheumatism and arthritis known as Imdrin under that name or of any product of substantially the same composition as said product Imdrin, do forthwith cease and desist from:

5. That the corresponding paragraph of the Commission's order to cease and desist (Transcript 958-959) reads:

> It is ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Imdrin," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

6. That the said second unnumbered paragraph on page 1 of said proposed final decree if included in the Court's final decree would leave the prohibitions of paragraphs 1 (a), (b), (c), (d), (e), and (f) as set forth in said proposed final decree applicable only to the sale and offering for sale and distribution in commerce of a product sold under the name "Imdrin" and not to the identical product if sold under any other name, and applicable only to a product offered, sold, and distributed in commerce for the treatment of the symptoms and alleviation of the aches, pains and fever of rheuma-

tism and arthritis and not applicable to any product sold, for example, as a cure or treatment of arthritis or rheumatism or sold as a cure for symptoms of arthritis or rheumatism other than aches, pains and fever.

7. That paragraph 1(a) as set forth in proposed final decree reads:

> (a) That the taking of said preparation will constitute an adequate, effective and reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition.

8. That the corresponding paragraph in the Commission's order to cease and desist (Transcript 959) reads:

> (a) That the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition.

9. That as the said paragraph 1(a) reads in the said proposed final decree the petitioners would be free to represent that their product "Imdrin" constitutes an adequate treatment, an effective treatment or a reliable treatment and would be forbidden only to represent that it constitutes an adequate effective *and* reliable treatment.

Wherefore, respondent prays the Court that any final decree entered be so worded as to enforce the Commission's order to the extent that it has been affirmed by the Court and particularly in the two paragraphs hereinabove called to the attention of the Court.

Respectfully submitted,

(S.) ROBERT B. DAWKINS,
Assistant General Counsel,
(S.) DONOVAN DIVET,
Special Attorney,
Attorneys for Respondents.

Dated: February 8, 1954.

And afterwards, to-wit: On the seventeenth day of February, 1954, the following further proceedings were had and entered of record, to-wit:

U.S.C.A. 7. Filed Feb. 17, 1954. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Feb. 17, 1954

Final Decree

Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said Corporation, having filed in this Court on November 25, 1952, their petition to review and set aside an order to cease and desist issued against them on October 3, 1952, by the Federal Trade Commission, respondent herein, in a proceeding before said respondent entitled "In the Matter of Rhodes Pharmacal Company, Inc., and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc., Docket Number 5691"; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein as required by the Federal Trade Commission Act, a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument; and this Court having thereafter fully considered the matter and having rendered its decision on November 3, 1953, modifying Paragraph 1 by eliminating subparagraph (c) thereof, to-wit, "that said preparation will afford any relief of severe aches, pains and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;" and by the insertion in lieu thereof of the following clause, "that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition or effect

a cure of the symptoms or manifestations of any such condition"; and the Court having affirmed the said order of the Federal Trade Commission as thus modified; and the Court on January 5, 1954 having denied respondent's petition for rehearing;

Now, therefore, it is hereby ordered, adjudged and decreed that the petitioners, Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of a preparation for the treatment of the symptoms and alleviation of the aches, pains and fever of rheumatism and arthritis known as Imdrin under that name or of any product of substantially the same composition as said product Imdrin, under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States Mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition or effect a cure of the symptoms or manifestations of any such condition;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin", to resume such normal habits or regular occupations;

(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin," which advertisement contains any of the representations prohibited in Paragraph 1 hereof;

And it is hereby further ordered, adjudged and decreed that within ninety days after the entry of this decree the petitioners shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with this decree.

Without prejudice to the right of the United States as provided in Section 5(1) of the Federal Trade Commission Act to prosecute suits to recover penalties for violations of the aforesaid order to cease and desist hereby modified and hereby affirmed and enforced as modified and without prejudice to the right of the Federal Trade Commission to institute and maintain contempt proceedings for violation of this decree, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

By the Court:

(S.) F. RYAN DUFFY,
(S.) PHILIP J. FINNEGAN,
(S.) WALTER C. LINDLEY,
United States Circuit Judges.

Dated: Feb. 17, 1954.
A True Copy:
Teste:
[SEAL.]

(S.) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the seventeenth day of February, 1954, there was issued to the Federal Trade Commission a Certified Copy of the Final Decree entered this date.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the Opinion of the Court, Order pursuant to Opinion, Petition for Rehearing, Answer to Peti-

tion for Rehearing, Order denying Rehearing, Motion for Entry of Final Decree, Answer to Motion for Entry of Decree, Final Decree, in Cause No. 10748, Rhodes Pharmacal Company, Inc., et al., Petitioners, vs. Federal Trade Commission as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 24th day of March A.D. 1954.

[SEAL]

(S.) KENNETH J. CARRICK,
Clerk of the United States Court
of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. —

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

RHODES PHARMACAL COMPANY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 18th, 1954.

(S.) ROBERT H. JACKSON,
Associate Justice of the Supreme Court
of the United States.

Dated this 23rd day of March 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 204817 1133

SUPREME COURT OF THE UNITED STATES

No. 80

OCTOBER TERM, 1954

FEDERAL TRADE COMMISSION, PETITIONER

vs.

RHODES PHARMACAL COMPANY, INC., ET AL.

Order allowing certiorari

(Filed October 14, 1954)

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.